

United States  
Circuit Court of Appeals

For the Ninth Circuit. /3

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GARDEN CITY CANNING COMPANY,  
Appellant,

vs.

WILLIAM ADDY, J. B. BOWEN, J. T. HEIDOT-  
TING, R. J. SUTTON and JOHN SAUNDERS,  
Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the United  
States for the Northern District of California,  
Southern Division

FILED

JAN 23 1940

PAUL P. O'BRIEN,  
CLERK



No. 9400

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Southern Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the Southern Division of the United States District Court, for the Northern District of California.

No. 27284-L

In the Matter of

GARDEN CITY CANNING COMPANY,  
a corporation,

Debtor.

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GARDEN CITY CANNING COMPANY,  
Appellant,

vs.

WILLIAM ADDY, J. B. BOWEN, J. T. HEIDOTTING, R. J. SUTTON and JOHN SAUNDERS,  
Appellees.

AGREED STATEMENT OF A CASE FOR USE  
ON APPEAL.

It Is Hereby Stipulated by and between the appellant and the appellees above named, by and through their respective counsel, that the following statement of the case may be used [1\*] on appeal under and pursuant to Rule 76 of the Rules of Civil Procedure for the District Courts of the United States:

That on the 6th day of February, 1936, Garden City Canning Company, a corporation, filed its pe-

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

tition for a reorganization under Section 77b of the Bankruptcy Act and for certain other relief under said section, which said petition shows that the business of the debtor was the packing and canning of fruits and vegetables and drying fruits, and alleged all of the facts necessary to confer jurisdiction upon the United States District Court for the Northern District of California under said Section 77b of the Bankruptcy Act.

That on the 6th day of February, 1936, Honorable Harold Louderback, as Judge of said United States District Court, made and entered the order of said court approving said petition as properly filed under Section 77b of the Bankruptcy Act, permitting the debtor to remain in temporary possession of its business and affairs and directing the debtor to give notice to its creditors and stockholders of a hearing to be had before said District Court on the 2nd day of March, 1936, at which hearing the court might make permanent said order, appoint a permanent trustee or trustees, or make such further order as might be necessary or proper and which said order further provided for the giving of notice to said creditors.

That thereafter on March 3, 1936, the debtor, under and pursuant to said order, filed a verified schedule of its creditors and stockholders, and included amongst said schedule of its creditors the names and addresses of the appellees herein. A

copy of said schedule is attached hereto as Exhibit "A".

That notice of said hearing so set for the 2nd day of March, 1936, was mailed to all of the creditors and stockholders of said debtor, including the appellees herein, and was published [2] as required by said order of February 6, 1936.

That thereafter and on, to-wit, the 12th day of March, 1936, the said District Court, after due continuance of the hearing set for March 2, 1936, made and entered its order, a copy of which said order is attached hereto and marked Exhibit "B".

That thereafter on April 10, 1936, said debtor filed its verified schedules of assets and liabilities; a copy of Schedule A-3 thereto is attached hereto marked Exhibit "C".

That thereafter the debtor filed its "Petition for Order Approving Summary of Order of March 12, 1936", Exhibit "B" hereto, a copy of which petition is attached hereto and marked Exhibit "D", and the summary therein referred to is set out in Exhibit "Q".

That thereafter Honorable Burton J. Wyman, as Special Master, made his order approving a purported summary, a copy of which order is attached hereto and marked Exhibit "E".

A copy of said purported summary was mailed to all of the creditors of said bankrupt, including the appellees herein, on April 30, 1936, and was published as required by the order of March 12, 1936.

That on April 30, 1936, the attorneys for said debtor mailed to all of the creditors of said debtor, including the appellees, a mimeographed copy of a plan of reorganization in the form of Exhibit "F" attached hereto, together with a form of proof of debt.

That thereafter and on May 1, 1936, said debtor filed its plan of reorganization in the form of Exhibit "F" attached hereto.

That thereafter and on the 4th day of June, 1936, appellees filed their verified proofs of claim with the Clerk of said court in the United States Post Office & Courthouse Building, San Francisco, California.

A true copy of the proof of claim filed by R. J. Sutton [3] is attached hereto as Exhibit "G". A true copy of the proof of claim filed by J. J. Heidotting is attached hereto as Exhibit "H". A true copy of the proof of claim filed by John Saunders is attached hereto as Exhibit "I". A true copy of the proof of claim filed by J. B. Bowen is attached hereto as Exhibit "J". A true copy of the proof of claim filed by W. M. Addy is attached hereto as Exhibit "K".

Thereafter and on November 4, 1936, the debtor filed with the Special Master its petition for confirmation of the reorganization plan, copy of which is attached hereto, marked Exhibit "L". Attached to said petition as filed was a copy of the plan of reorganization. (Exhibit "F" hereto.)



That thereafter on November 4, 1936, the Special Master hereinabove referred to made and entered an order calling a meeting of the creditors of said debtor to be held on November 16, 1936, at the hour of 2:00 o'clock P. M. of said day, and approved the form of notice to be sent to said creditors, a true copy of which order is attached hereto as Exhibit "M"; that thereafter a copy of said notice as so approved, a copy of which notice is set out in Exhibit "Q", was mailed to all of the stockholders and creditors of said debtor appearing in the schedules of the debtor on file, including the appellees herein; that thereafter and on December 2, 1936, the Special Master filed his report, a copy of which is attached hereto and marked Exhibit "N"; and that thereafter and on the 15th day of December, 1936, the said District Court made its order approving said plan of reorganization, a copy of which is attached hereto and marked Exhibit "O".

That thereafter and on January 12, 1938, the debtor filed its "Report of Debtor of Complete Execution and Accomplishment of Confirmed Plan of Reorganization and Petition for Final Decree", a copy of which is attached hereto as Exhibit "P".

[4]

That thereafter and on January 22, 1938, the appellees herein filed their "Petition of Certain Creditors Objecting to Report and Final Discharge", and the debtor filed its answer to said objections, and the matter of the hearing of said ob-

jections was referred to Burton J. Wyman, as Special Master. Copies of said "Petition of Certain Creditors Objecting to Report and Final Discharge" and of the debtor's answer appear as part of attached Exhibit "Q", and therefore separate copies are not here attached.

That attached hereto and marked Exhibit "Q" is the certificate and report of the Special Master on objections to report and final discharge of debtor, which said report sets forth the objections of said appellees to said petition for final discharge and the answer of the debtor to said objections.

That attached hereto and marked Exhibit "R" is the supplementary certificate and report of said Special Master; that said Special Master's report came on regularly for hearing before the said District Court, and, after being submitted for decision, the court rendered its opinion in writing, a copy of which is attached hereto and marked Exhibit "S", and made and entered its order, copy of which is attached hereto and marked Exhibit "T"; that attached hereto and marked Exhibit "U" is the notice of appeal from said order; that attached hereto and marked Exhibit "V" is the cost bond on appeal; that attached hereto and marked Exhibit "W" is the stipulation for the extension of time to docket said appeal; that attached hereto and marked Exhibit "X" is the stipulation for the further extension of time to docket said appeal, and attached hereto and marked Exhibit "Y" is the

designation of points to be relied upon on appeal.

That there has been omitted from all of the [5] Exhibits hereto all papers and documents referred to herein or therein which are set forth in full in some other exhibit hereto.

Dated: December 19th, 1939.

LOUIS ONEAL

TORREGANO & STARK

By ERNEST J. TORREGANO

Attorneys for Appellant.

LOYD HEWITT

A. M. DREYER

BROBECK, PHLEGER

& HARRISON

MOSES LASKY

Crocker Bldg.

By MOSES LASKY

Attorneys for Appellees.

#### ORDER APPROVING STATEMENT

Upon the consideration of the foregoing statement prepared under Rule 76 of the Federal Rules of Civil Procedure, from which it appears that said statement conforms to the truth and that same contains all matters necessary to present the questions raised by the appeal,

It is ordered that the said statement be and the same is hereby approved as the record on appeal.

Dated this 20th day of December, 1939.

[Seal] A. F. ST. SURE

United States District Judge. [6]

## CERTIFIED COPY

United States of America,  
Northern District of California—ss.

I, Walter B. Maling, Clerk of the United States District Court in and for the Northern District of California, do hereby certify that the annexed and foregoing is a true and full copy of the original Agreed Statement of a Case for Use on Appeal, filed December 20, 1939 In the Matter of Garden City Canning Company, a corporation, Debtor, No. 27284-L, now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at San Francisco, Calif., this 20th day of December, A. D. 1939.

[Seal]

WALTER B. MALING

Clerk.

By E. H. NORMAN

Deputy Clerk.

[Endorsed]: Filed Dec. 20, 1939. [7]

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EXHIBIT "A"

[Title of District Court and Cause.]

DEBTOR'S VERIFIED SCHEDULE OF  
CREDITORS AND STOCKHOLDERS

To the Honorable, the above entitled Court:

Now comes the debtor above named, Garden City Canning Company, a corporation, and files in the

above entitled proceedings a verified schedule of the creditors and stockholders of said debtor, to whom notice of proceedings as required under the provisions of the Bankruptcy Act should be given, and which [8] schedule sets forth the last known address of each of said creditors and stockholders as far as the same is known to the debtor, to-wit:

<u>Name of Creditor</u>	<u>Address</u>
Addy, W. M.	Yuba City, California
Anderson Stamp Co.	82 S. 2nd St., San Jose, Cal.
Albertoli, John	1197 Columbus Ave., San Francisco California
Butcher, Roy M.	1020 Sherwood Ave., San Jose, California
Bay City Tying Wire Service	540 First St., San Francisco, California
Botelho, George	798 N. 13th St., San Jose, Cal.
Bowen, J. B.	Yuba City, California
California Container Corp.	Emeryville, California
Canners League of California	215 Market St., San Francisco, California
Chase Lumber Company	San Jose, California
Can Pack Machinery Company	San Jose, California
Everett, P. A.	Yuba City, California
Farnsworth & Callahan	262 W. Santa Clara St., San Jose, California
Federal Pitter Company	Vernalis, California
Fire Protection Engineering Co.	369 Pine St., San Francisco, Cal.
Fuller, W. P. Co.	361 S. 1st. St., San Jose, Calif.
Gloor & Farrand	Yuba City, California
Greco Canning Co., Inc.	San Jose, California
Garratt & Callahan Co.	148 Spear St., San Francisco, Cal.
Gervassio, Rudolph	264 N. 17th St., San Jose, Cal.
Heidotting, J. J.	Yuba City, California
Highway Transport Co.	559 Sixth St., San Francisco, Cal.

<u>Name of Creditor</u>	<u>Address</u>
Hohwiesner, F. & Co.	206 Sansome St., San Francisco, California
Haslett Warehouse Co.	280 Battery St., San Francisco, California
Heitzmann, F. A. & Son	San Jose, California
Hayden, Fred	369 Stockton Avenue, San Jose, California
Karnegas, Wm.	Yuba City, California
Lindsay, Curtis	17 E. Santa Clara St., San Jose, California
Marwedel, C. W. Co.	76 First St., San Francisco, Cal.
Meschendorf & Winship	Yuba City, California
Modesto Transportation Co.	Modesto, California
Marshall Newell Supply Co.	Spear & Mission St. San Francisco, California
Markovitz & Fox	40 N. 4th St. San Jose, Cal.
Mignola, August & Co.	37 S. Market St. San Jose, Cal.
Mooney, L. F. Co.	P. O. Box 1164, Sacramento, Cal.
National Adhesive Corporation	735 Battery St. San Francisco, California
Pacific Can Company	290 Division St. San Francisco, California
Pacific Canners Association	260 California St. San Francisco, California
Pacific Fire Extinguisher Co.	142 Ninth St. San Francisco, Cal.
Pacific Telephone & Telegraph Co.	San Jose, California
Pacific Gas & Electric Co.	San Jose, California
Prentiss Motor Works	78 Race St. San Jose, California
Reineri Welding Works	1141 S. 1st St. San Jose, Cal.
San Jose Supply House	520 S. 1st St. San Jose, Cal.
Smith Manufacturing Co.	106 Stockton Ave., San Jose, Cal.
San Jose Foundry	525 San Augustine St. San Jose, California

<u>Name of Creditor</u>	<u>Address</u>
San Jose Hardware Co.	San Jose, California
San Jose Water Works	San Jose, California
Saunders, John	Yuba City, California
Smith, Press	Yuba City, California
Stuart Oxygen Company	211 Bay St. San Francisco, Cal.
Sutton, R. J.	Yuba City, California
Valley Truck Line	441 N. San Pedro St. San Jose, Cal.
Western Sheet Metal Works	393 W. Santa Clara St. San Jose, California
Western Metal & Expt. Co.	220 Ryland St. San Jose, Cal.
Williams & Russo	773 W. San Carlos St. San Jose, California
Warren & Bailey	198 2nd St. San Francisco, Cal.
Hauck, Marie	Yuba City, California

<u>Name of Stockholder</u>	<u>Address</u>
G. J. Greco	3rd Floor, First National Bank Bldg, San Jose, California
Greco Canning Co., a corporation	Howard and Autumn St., San Jose, California
George C. Fortune	% Balfour Guthrie & Co. Ltd., 33 California St., San Francisco, California.

[Seal]

GARDEN CITY CANNING  
COMPANY, a corporation,  
By G. J. GRECO  
Its President [10]

United States of America,  
Northern District of California,  
County of Santa Clara—ss.

G. J. Greco, being first duly sworn, on oath deposes and says:

That he is the president of the Garden City Canning Company, a corporation; that he has duly examined the books of said corporation and hereby certifies on oath that the list of creditors and stockholders, together with the addresses of the same, as are set forth in the attached exhibit, are true and correct, as will appear upon the books of said debtor, and that the Post Office address of said creditors, and each of them, as set forth in said list, is the same as appears upon the books of said debtor.

G. J. GRECO

Subscribed and sworn to before me this 14th day of February, 1936.

[Seal]

C. E. LUCKHARDT

Notary Public in and for the County of Santa Clara,  
State of California.

[Endorsed]: Filed Mar. 3, 1936. [11]



EXHIBIT "B"

[Title of District Court and Cause.]

ORDER PERMITTING DEBTOR TO REMAIN  
IN PERMANENT POSSESSION OF ITS  
ASSETS UNTIL REJECTION OR CON-  
FIRMATION OF ITS PLAN OF REOR-  
GANIZATION OR DISMISSAL OF PRO-  
CEEDINGS

The above entitled court having made, entered and filed herein on the 6th day of February, 1936, an order approving the debtor's petition and fixing the 2nd day of March, 1936, at the hour of 10 o'clock A. M. of said day, at the court room of the above entitled court, as the time and place of the hearing of the debtor's application for an order permitting said debtor to [12] permanently remain in possession of his assets until action has been taken by the court and the creditors upon a plan of reorganization or a dismissal of said proceedings; and at which time and place the court further reserves jurisdiction to make such further and other order or orders amplifying, extending, limiting or otherwise modifying its order as to it may seem proper; and the court having further provided in said order that notice to the creditors and stockholders of said hearing shall be given by the debtor by publishing a notice of said hearing in the San Jose Mercury Herald, a newspaper of general circulation in the City of San Jose, County of Santa Clara, State of California, and directing that the said debtor give

further notice by mailing, postage prepaid, a notice to each creditor and stockholder known to said debtor, at his Post Office address; and it now appearing to the court that such publication was made as required by the order of this court, and that an affidavit of said publication has been filed in the above entitled proceedings; and it further appearing to the court that the mailing of the notice to the creditors and stockholders has been done as required by said order, as appears from the affidavit filed in the above entitled proceedings, and the debtor having appeared at said hearing on the 2nd day of March, 1936, by its officers and its attorneys, Messrs. Louis Oneal of San Jose, California, and Ernest J. Torregano and Charles M. Stark of San Francisco, California, and all parties appearing at said hearing desiring to be heard, having been heard by the court, and the debtor's application for an order permitting it to remain in possession of its assets pending reorganization proceedings, having been submitted to the court, and the court now being fully advised in the premises;

It is hereby ordered, adjudged and decreed as follows:

(1) That the said debtor be and he is hereby permitted to remain in possession of its assets until action has been taken [13] by the creditors and the court, upon its reorganization plan, to be submitted to the court and the creditors, or until the dismissal of the above entitled proceeding, or until the fur-

ther order of this court, during the pendency of said proceeding.

(2) That the order of the court dated February 6, 1936, as hereinafter supplemented and modified, be and the same hereby is continued in full force and effect, and that the debtor be and it is hereby authorized to administer its assets and conduct its business in the normal course thereof, and to manage and operate, and to receive and collect the rents, issues and profits from the business and the properties of the debtor's estate, subject to the provisions of and with all the powers and authority granted by said order, except as herein modified.

(3) That the debtor herein shall, prior to the 2nd day of April, 1936, unless prior to said date for good cause shown said time shall be extended by the court, file in the above entitled proceedings its verified schedules setting forth in detail its assets and liabilities, including the names and addresses of its stockholders and creditors, and shall submit such other information from time to time to the Special Master appointed and designated therein, as shall be necessary or required to disclose the conduct of the debtor's affairs, and the fairness of any proposed plan of reorganization.

(4) That except as otherwise specifically provided in Section 77b of the Bankruptcy Act, notice of subsequent proceedings arising in the ordinary course and conduct of the business and the administration of the assets of the debtor's estate herein, and other than proceedings before the Special

Master for the disallowance or liquidation of claims of parties in interest, shall be given to such persons or parties as have been granted, or shall hereafter obtain, leave of the court to intervene in these proceedings. [14]

(5) That the debtor herein shall file in the above entitled proceedings on or prior to the 2nd day of April, 1936, unless prior to said date for good cause shown said time shall be extended, its plan of reorganization, which plan shall set forth in detail in what manner, if at all, the rights, liens and equities of creditors and stockholders will be affected by said plan, if it be confirmed.

(6) That any and all issues or matters arising in these proceedings of any nature whatsoever, be and they are hereby referred for consideration and report to Honorable Burton J. Wyman, one of the referees in bankruptcy of this court, who is hereby appointed Special Master for the purpose of hearing such issues or matters, and to report to the court under and pursuant to the directions and instructions herein set forth; provided, however, that proceedings with reference to the reports of said Special Master on the allowance or disallowance of claims of creditors and the interest of the stockholders of the debtor, are subject to the provisions of paragraph (9) hereof. Such hearing as shall be had by said Special Master upon such issues or matters presented to him, shall be had pursuant to notice to the parties entitled to receive notice thereof, and upon the conclusion of said hearing

before said Special Master, he is hereby directed and instructed to report to this court with all convenient speed, the testimony taken before him, his findings of fact, conclusions of law, and recommendations; provided, further, that such Special Master, in reference to any expenses incurred pursuant to any hearing had before him upon this reference, shall in his report make his recommendation to the court as against whom said costs and expenses shall be taxed.

(7) That the debtor be and it is hereby authorized, with the approval of the Special Master, after hearing upon notice to the parties in interest in the above entitled proceeding entitled to receive same, to compromise, adjust, or settle any [15] claims or rights which the debtor's estate may have against any person, firm or corporation, and to sell any of the assets or property of the debtor's estate herein not necessary to, or used in the business of, the estate, upon such terms and conditions as to said Special Master shall be deemed to be for the best interests of the estate; provided, however, that the amount of any such claim or right does not exceed \$1,000.00, and that the reasonable value of any of the assets or properties sought to be sold by the debtor, do not exceed \$1,000.00; and that said Special Master be and he is hereby empowered to require, prior to his approval, that an inventory of said property be made by a disinterested person and that appraisers be appointed to appraise and report the value thereof to said Special Master.

(8) That the claims and interests of creditors and stockholders shall be filed or evidenced and allowed in the following manner:

All claims of creditors shall be filed in the manner herein provided, on or before the 15th day of June, 1936, and unless so filed on or before said date, no such claim may participate in any plan of reorganization, except upon an order first had and obtained from the court for good cause shown; that upon the filing of claims of creditors and stockholders, in the form and manner required by law, in relation to the proving of claims in debtor's proceedings under Section 77b of the Bankruptcy Act, each of them shall be deemed finally allowed in these proceedings, unless the debtor or any creditor or stockholder of the debtor, who has intervened or shall hereafter intervene in these proceedings, prior to any payments of money thereon, shall object to the allowance of any such claims by filing an objection with the Special Master, duly verified, and give written notice thereof by mail to the claimant, or in such manner as the Special Master shall direct said objection to be given, in which event the claim [16] to which such objection is filed shall be dealt with as hereinafter provided. The nature and kind of any such objection shall not be deemed limited by anything contained in this order, the court hereby expressly reserving any right conferred by Section 77b of the Bankruptcy Act, to consider objections, or upon his own motion to scrutinize the circumstances of any assignment of future

rent claims and the amount of the consideration paid for such assignment, in determining the amount of damages allowable to the assignee and holder of such claims.

(9) The debtor, or the objector, or the claimant, may apply to the Special Master for a hearing on any such objections, and thereupon the Special Master shall fix the time for hearing the objection, of which due notice shall be given to all parties in interest herein in the manner and in the form as may be directed by the Special Master for the giving of such notice. At the time appointed for such hearing, the Special Master may require the production of such proof and the filing of such briefs in respect to the claim filed by the claimant or by the objecting party, as he may deem necessary or advisable, and if it shall appear from such proof and from such briefs that the claim ought to be expunged or reduced, the Special Master shall so report in accordance with the directions herein given for the report to be made by him pursuant to hearings had before him. Unless written exception to such report shall be filed with the Special Master by the debtor, or other objecting party, or the claimant, within ten days after the making of such report, the report of the Special Master shall stand confirmed without further order or notice. If the debtor, or other objecting party, or the claimant, shall desire to except to any report with respect to claims made by the Special Master in these proceedings, he shall file with the Special

Master written exceptions to such report, setting out the error complained of within ten days after the report is made, [17] unless prior to the expiration of such time an extension has been granted by an order of this court or by the Special Master. When such report is made by the Special Master in a contested matter, the time within which to file said written exceptions shall begin to run from the date of the service of a copy of the Special Master's report upon the adverse party. Upon the filing of such written exception, the Special Master shall forthwith certify to the Judge of this court the question presented, a summary of the evidence relating thereto, his findings of fact and conclusions of law, and transmit same to the court, together with a copy of the claim objected to and a copy of the written exception to his report filed with him.

(10) The debtor is directed to file with the Special Master on or before the date fixed by paragraph (8) hereof, a list, as of any convenient date after the filing of the original petition to reorganize herein, of the holders of the stock of said debtor, showing the classification thereof, and certified by an officer of the debtor corporation, and such filing shall be deemed to evidence the interest of the holders of said stock, their successors and assigns, for the purpose of these proceedings.

(11) For the purpose of being heard on any question arising in these proceedings, including consent to any reorganization plan, the interests



of any particular stockholder shall be evidenced by the presentation of the certificate representing the stock held by him, or by the presentation of the certificate of any bank, trust company, broker, or other depositary satisfactory to the said Special Master, stating that said stock is held for safe-keeping, or otherwise, for the person or persons specified in such certificate. That for the purpose of participating in any reorganization plan, the interest of any particular stockholder shall be evidenced by the filing with the Special Master, within such period of time as the Special Master shall or may fix, [18] of certificates representing the stock held by him, or a certificate of any bank, trust company, or other depositary satisfactory to such Special Master, stating that such stock is held by such depositary subject to the order of said Special Master. Any objection to the right of any stockholder to be heard on any question arising in these proceedings, and any objection to the participation of any stockholder in any reorganization, shall be made by filing such objection with the Special Master in writing and by serving a copy of said objection upon the debtor or its attorneys.

(12) That the court reserves for future determination, as may be certified to it by said Special Master, all questions with respect to any proposed plan of reorganization, the division of creditors and stockholders of the debtor into classes according to the nature of their respective claims and in-

terests, and the effect to be given in these proceedings to the payment or non-payment to any creditor of the debtor of dividends that may or shall be hereafter declared and distributed; the court expressly reserves the right herein, and nothing herein shall be deemed to prejudice the right of the court or said Special Master, to classify said creditors in relation to their right to receive moneys distributable from the assets of the debtor, pursuant to its plan of reorganization to be hereafter filed.

(13) That the debtor shall, on or before the 2nd day of April, 1936, give notice of the making and entry of this order to all the creditors and stockholders of the debtor, as the same may appear on the books of the debtor or upon the verified schedules of creditors and stockholders filed herein by the debtor, by mailing a copy of this order, or a brief summary thereof, in form satisfactory and approved by the Special Master, to such creditors and stockholders at their addresses appearing on said books or verified schedules, and by causing the publication [19] of said brief summary to be made at least once in the San Jose Mercury Herald, a newspaper of general circulation in the County of Santa Clara, City of San Jose, State of California.

(14) That the court reserves full power, right and jurisdiction to make from time to time such orders amplifying, extending, limiting or otherwise modifying this order, as to the court may seem proper, and to give directions to the debtor as to

the preservation and conservation of its estate during the pendency of these proceedings as the court may deem necessary and proper to fully protect the rights of creditors and stockholders of said debtor.

Dated: March 12th, 1936.

HAROLD LOUDERBACK

United States District Judge.

[Endorsed]: Filed Mar. 14, 1936. [20]

[Title of District Court and Cause.]

SCHEDULES OF ASSETS AND LIABILITIES  
 OF GARDEN CITY CANNING COMPANY,  
 A CORPORATION, DEBTOR. [21]

Schedule A-3.

CREDITORS WHOSE CLAIMS ARE UNSECURED.

[N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to Ledger or Voucher.	Names of Creditors.	Residences, (If unknown, that fact must be stated.)	When and Where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom.	AMOUNT
					\$ Cts.
A1A	Anderson Stamp Co.				
	82 S. 2nd St., San Jose		1935	Supplies	20.93
A4A	Anderson-Barngrover Mfg. Co.,				
	217 W. Julian St., S. J.		1936	Labeling Machine Part	3.08
A7A	Bean, Jerome C.				
	25 Vine St., San Jose, Cal.		1936	Auto Tire	2.83
B1A	Butcher, Roy M.				
	1020 Sherwood Ave., S. J.		1934-5	Electrical Installations	350.85

Reference to Ledger or Voucher.	Names of Creditors.	Residences, (If unknown, that fact must be stated.)	When and Where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom.	AMOUNT
					\$ Cts.
A15A	Bay City Tying Wire Co. 540 1st St., San Francisco		Oct. 1935	Shook Tying Wire.....	53.00
A16A	Botelho, George 798 N. 13th St., San Jose		Jan. 1936	Coal .....	26.78
C3D	Calif. Container Corp. Emeryville, Calif.		1935	Corrugated Containers .....	607.83
C7A	Canners League of Calif. 215 Market St., San Fran.		1935	Weighing Peaches .....	149.20
C1A	Chase Lumber Co. San Jose,		1936	Shook .....	16.30
C10A	Can Pack Machinery Co. S. J.		1935	Repairs .....	50.60
F5A	Farnsworth & Callahan 262 W. Sta Clara St. S. J.		1935	Auto Supplies .....	5.10
F4A	Fire Protection Eng'g Co. 369 Pine St., San Fran.		Jan. 1936	Watchman's Clock Dials.....	3.22
F6A	Fuller, W. P. Co. 361 S. 1st St., S. J.		1935	Paint .....	17.19
G9A	Garratt & Callahan Co. 148 Spear St., San Francisco		1935	Boiler Compound .....	43.26

Reference to Ledger or Voucher.	Residences, (If unknown, that fact must be stated.)	Names of Creditors.	When and Where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom.	AMOUNT
					\$ Cts.
G5A	Gervasio, Rudolph 264 N. 17th St., San Jose		1935	Draying .....	703.84
H2A	Highway Transport Co. 559 6th St., San Francisco		Dec. 1935	Express .....	1.66
H3B	Hohwiesner, F. & Co. 206 Sansome St., San Fran.		1935	Insurance .....	117.86
H5B	Haslett Warehouse Co., 280 Battery St., San Fran.		1935	Warehousing .....	192.46
H4A	Heitzmann, F. A. & Son, S. J.		1936	Paint .....	.46
H13A	Hayden, Fred 369 Stockton Ave., S. J.		1935	Roof Repairs .....	34.50
L1A	Lindsay, Curtis, S. J.		1935	Stationery .....	2.62
				Carried Forward . . Total,	2403.57

Note.—Give street number and address where possible.

[Seal]

GARDEN CITY CANNING  
COMPANY

By G. J. GRECO, President,

Petitioner. [22]

Schedule A-3.

CREDITORS WHOSE CLAIMS ARE UNSECURED.

[N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to Ledger or Voucher.	Names of Creditors.	Residences, (if unknown, that fact must be stated.)	When and Where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom.	AMOUNT
					\$            Cts.
M1A	Marwedel, C. W.			Brought Forward . . .	2403.59
	76 1st St., San Francisco		1935	Hardware .....	13.21
M4A	Modesto Transportation Co.				
	Modesto, Calif.		1935	Draying .....	16.30
M6B	Marshall-Newell Supply Co.				
	Spear & Mission St., S. F.		1935	Supplies .....	85.55
M9A	Markovitz & Fox		Dec.		
	40 N. 4th St., San Jose		1935	Hardware .....	3.86
N1BA	Federal Pitter Co. Vernalis, Cal.		1935	Pitter Rent (Note given) .....	2500.00
M10A	Mignola, August & Co.,		June		
	37 S. Market St., S. J.		1935	Sharpen Saw .....	.40

Reference to Ledger or Voucher.	Names of Creditors.	Residences, (If unknown, that fact must be stated.)	When and Where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom.	AMOUNT
N1A	Noonan, L. F. Co.				
	P. O. Box 1164,	Sacramento	1935	Cherries for Cocktail.....	3145.24
N2A	National Adhesive Corp.				
	755 Battery St.,	S. F.	1936	Warehouse Supplies .....	6.18
P12A	Pacific Fire Ext. Co.				
	142 9th St.,	S. F.	1935	Rent Automatic Fire Alarm.....	90.00
P4A	Pacific Tel. & Tel. Co.,	S. J.	1936	Telephone Service .....	12.35
P5B	Pacific Gas & Electric Co.				
			1936	Gas and Electric Service.....	36.85
R6A	Rosendin Motor Works				
	78 Race St.,	San Jose	1935	Motor Repairs .....	23.08
R7A	Raineri Welding Works				
	1141 S. 1st St.,	S. J.	Dec. 1935	Repairs .....	2.75
S1D	San Jose Supply House				
	520 S. 1st St.,	San Jose	1935	Hardware Supplies .....	186.16
S8A	Smith Mfg. Co.,				
	106 Stockton Ave.,	S. J.	1935	Machinery Repairs .....	400.53
S15A	San Jose Foundry				
	525 San Augustine St.,	S. J.	1935	Repairs .....	84.67



Reference to Ledger or Voucher.	Names of Creditors.	Residences, (If unknown, that fact must be stated.)	When and Where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom.	AMOUNT
S16A	San Jose Hardware Co.	S. J.	1935	Supplies	3.04
S9A	San Jose Water Works,	S. J.	1936	Water	18.00
S22A	Stuart Oxygen Co.,		Jan		
	211 Bay St.,	San Francisco	1936	Tank of Oxygen	3.91
V2A	Valley Truck Line		1935—Dec		
	441 N. San Pedro St.,	S. J.	1936—Jan.	Draying	342.46
W4A	Western Sheet Metal Works		Nov.		
	393 W. Sta Clara St.	S. J.	1935	Repairs	6.70
W6B	Western Met. & Exp. Co.				
	220 Ryland St.,	San Jose	1935	Draying	135.10
W7A	Williams & Russo				
	773 W. San Carlos St.	S. J.	1935	Coal and Supplies	22.99
W13A	Warren & Bailey				
	198 2nd St.,	San Francisco	1935	Thermometer Repairs	36.38
A6A	Addy, W. M.	Yuba City,	1935	YC Peaches	994.58
B4A	Bowen, J. B.	Calif.	1935	"	633.29
E1A	Everett, P. A.	"	1935	"	1211.97

Reference to Ledger or Voucher.	Names of Creditors.	Residences, (If unknown, that fact must be stated.)	When and Where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom.	AMOUNT
G5A	Gloor & Farrand	Calif. City	1935	YC Peaches	4658.64
H1A	Hauck, Marie H.	" "	1935	"	75.31
H2A	Heidotting, J. J.	" "	1935	"	308.91
K1A	Karnegas, Wm.	" "	1935	"	592.52
M2A	Meschendorf & Winship	" "	1935	"	1831.71
S2A	Sutton, R. J.	" "	1935	"	435.77
S3A	Saunders, John	" "	1935	"	364.40
S4A	Smith, Press	" "	1935	"	465.21
				Total,	21091.59

Note.—Give street and number address where possible.

[Seal] GARDEN CITY CANNING  
COMPANY

By G. J. GRECO, President,  
Petitioner.

[Endorsed]: Filed Apr. 10, 1936. [23]

EXHIBIT "D"

[Title of District Court and Cause.]

PETITION FOR ORDER APPROVING SUMMARY OF ORDER OF MARCH 12, 1936.

To the Hon. Burton J. Wyman, Special Master:  
The petition of Garden City Canning Company respectfully represents:

That your petitioner is the debtor in the above entitled proceedings. That on the 12th day of March, 1936, the above entitled court made and entered its order permitting your petitioner to remain in permanent possession of its assets until rejection or confirmation of its plan of reorganization or the dismissal of said [24] proceedings and directing certain steps to be taken pursuant thereto.

That on the 30th day of March, 1936, the above entitled court made and entered its order extending the time of your petitioner to file its schedules of assets and liabilities, submit its plan of reorganization, and give notice to its creditors and stockholders of the contents of said order of March 12, 1936, until the 2nd day of May, 1936.

That in said order of March 12, 1936, it is provided that your petitioner shall mail to its creditors, and cause to be published, a summary of said order of March 12, 1936, which summary shall first be submitted to the Special Master herein for approval.

That attached hereto and marked Exhibit "A",

is a summary of said order of March 12, 1936, prepared by your petitioner.

That leave has not been given to any person to intervene in these proceedings, and therefore no notice is required to be given of the hearing of this petition.

Wherefore, your petitioner prays that an order may be made and entered herein approving the form of the summary of the order of March 12, 1936, copy of which summary is attached hereto, so as to enable your petitioner to cause a copy of said summary to be published and mailed to its creditors and stockholders as required by said order of March 12, 1936; and for such further and other order as may be just and proper in the premises.

GARDEN CITY CANNING  
COMPANY

By G. J. GRECO

Its President.

LOUIS ONEAL, ESQ.

TORREGANO & STARK

By ERNEST J. TORREGANO

Attorneys for Debtor. [25]

United States of America  
Northern District of California  
County of Santa Clara—ss.

G. J. Greco, being first duly sworn, deposes and says:

That he is an officer, to-wit, President of Garden City Canning Company, a corporation, pe-

itioner herein, and is duly authorized to make this verification for and on behalf of said petitioner named and described in the foregoing petition. That he has read said petition and knows the contents thereof, and that the same are true according to the best of his knowledge, information and belief.

G. J. GRECO.

Subscribed and sworn to before me this 7th day of April, 1936.

[Seal] C. E. LUCKHARDT

Notary Public in and for the County of Santa Clara, State of California.

[Endorsed]: Filed Apr. 11, 1936. [26]

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EXHIBIT "E"

[Title of District Court and Cause.]

ORDER APPROVING FORM OF SUMMARY  
OF ORDER OF MARCH 12, 1936.

Upon the reading, filing and consideration of the petition of the debtor above named for an order approving the form of the summary of the order made and entered by the above entitled court on the 12th day of March, 1936, so as to enable said debtor to forward a copy of said summary to its creditors and stockholders and to publish a copy thereof as is required by said order, and the court being fully advised in the premises, and this being a [27] proper case for this order, now, on motion

of Ernest J. Torregano, Esq., one of the attorneys for said debtor,

It is hereby ordered, that the form of the summary made by the debtor of the order of March 12, 1936, copy of which summary is attached hereto and marked Exhibit "A", be and the same is hereby approved as satisfactory to the undersigned Special Master.

Dated this 11 day of April, 1936.

BURTON J. WYMAN,

Special Master.

[Endorsed]: Filed Apr. 11, 1936. [28]

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EXHIBIT "F"

DEBTOR'S NO. 1

10/7/38

BJW

R

[Title of District Court and Cause.]

PLAN OF REORGANIZATION

I

Classification of Creditors

Debtor's creditors fall within four classes, to-wit: (a) claims entitled to priority; (b) claims for money advanced secured by warehouse receipts on canned goods; (c) claims for property sold under conditional sales contracts; and (d) general unsecured claims.

## II

## Priority Claims

At the time of the filing of the proceedings for reorganization, debtor owed \$669.37 on labor claims which were entitled to priority of payment. All of these claims have been paid in full in the regular course of business.

## III

## Claims for Money Advanced Secured by Warehouse Receipts on Canned Goods

Debtor is indebted to Pacific Can Co., 290 Division Street, San Francisco, California, in the sum of \$135,083.22, which said indebtedness is secured by warehouse receipts on canned goods packed by debtor. Debtor is also indebted to Greco Canning Company, Autumn and Howard Streets, San Jose, California, in the sum of \$60,837.47, secured by a second lien on the same canned goods on which Pacific Can Co. has a first lien. The value of the security is ample to pay the claim of the Pacific Can Co. in full but it is not quite sufficient to discharge the claim of Greco Canning Company. The debtor proposes to pay the claim of Pacific Can Co. in accordance with the terms of its contract with Pacific Can Co.; that is, upon canned goods being withdrawn from the warehouse, the lien of the Pacific Can Co. will be discharged. Debtor does not propose to pay anything to Greco Canning Company until the general unsecured claims are paid as provided in paragraph V hereof, and said

Greco Canning Company has executed an agreement whereby, in consideration of the approval of this plan of reorganization it will waive any payment whatsoever on its claim until all of the creditors listed in paragraph V of said plan are paid as provided in said paragraph V.

#### IV

#### Claims for Property Sold Under Conditional Sales Contract

Debtor is purchasing certain can conveyors from John Albertoli, 1197 Columbus Avenue, San Francisco, California, under a [29] contract of conditional sale, under which contract there is still a balance due said John Albertoli of \$2,887.16. By reason of the fact that the value of said can conveyors is greatly in excess of the balance due under said conditional sales contract, debtor proposes to discharge said conditional sales contract at the rate of \$140.00 per month commencing with the date of the entry of the order approving this plan until said balance is paid in full unless debtor is able to pay the entire balance due on the contract prior to the due date thereof, in which event debtor will obtain a 10% discount on the contract price.

#### V

#### General Unsecured Claims

The general unsecured claims against the debtor are fifty-six in number. Of these claims, fourteen



are for less than \$10.00. These fourteen claims, totaling \$45.81, are as follows:

Anderson-Barngrover Mfg. Co.....	\$ 3.08
Jerome C. Bean.....	2.83
Farnsworth & Callahan.....	5.10
Fire Protection Eng'g. Co.....	3.22
Highway Transport Co.....	1.66
F. A. Heitzmann & Son, S. J.....	.46
Curtis Lindsay .....	2.62
Markovitz & Fox.....	3.86
August Mignola & Co.....	.40
National Adhesive Corporation.....	6.18
Raineri Welding Works.....	2.75
San Jose Hardware Co.....	3.04
Stuart Oxygen Co.....	3.91
Western Sheet Metal Works.....	6.70
Total	\$ 45.81

The remaining unsecured claims against the debtor are as follows:

Anderson Stamp Co.....	\$ 20.93
Roy M. Butcher.....	350.85
Bay City Tying Wire Co.....	53.00
George Botelho .....	26.78
California Container Corporation.....	607.83
Canners League of California.....	149.20
Chase Lumber Co.....	16.30
Can Pack Machinery Co.....	50.60
W. P. Fuller Co.....	17.19
Garratt & Callahan Co.....	43.26
Rudolph Gervassio .....	703.84
F. Hohweisner & Co.....	117.86
Haslett Warehouse Co.....	192.46
Fred Hayden .....	34.50
C. W. Marwedel.....	13.21
Modesto Transportation Co.....	16.30
Marshall-Newell Supply Co.....	85.55
Federal Pitter Co.....	2,500.00
L. F. Noonan Co.....	3,145.24

Pacific Fire Ext. Co.....	90.00
Pacific Tel. & Tel. Co.....	12.35
Pacific Gas & Electric Co.....	36.85
Rosendin Motor Works.....	23.08
San Jose Supply House.....	186.16
Smith Mfg. Co.....	400.53
San Jose Foundry.....	84.67
San Jose Hardware Co.....	18.00
Valley Truck Line.....	342.46
Western Met. & Exp. Co.....	135.10
Williams & Russo.....	22.99
Warren & Bailey.....	36.38
W. M. Addy.....	934.58
J. B. Bowen.....	633.29
P. A. Everett.....	1,211.97

[30]

Gloor & Farrand.....	4,658.64
Marie H. Hauck.....	75.31
J. J. Heidotting.....	308.91
Wm. Karnegas .....	592.52
Meschendorf & Winship.....	1,831.71
R. J. Sutton.....	435.77
John Saunders .....	364.40
Press Smith .....	465.21

Total	\$21,045.78
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Debtor proposes to cause to be paid to all of said general unsecured claimants, 50 per cent of the amount of their claims in the following manner, to-wit:

(a) To all claimants whose claims are less than \$10.00, 50 per cent of the amount of their claim in cash upon the entry of the order approving this plan of reorganization;

(b) To all claimants whose claims are in excess of \$10.00, 20 per cent of the amount of

their claim in cash upon the entry of the order approving this plan of reorganization, 10 per cent of the amount of their claims four months after the entry of the said order, ten per cent of the amount of their claims eight months after the entry of the said order, and ten per cent of the amount of their claims one year after the entry of said order.

Debtor will execute and deliver to all claimants whose claims are in excess of \$10.00, three promissory notes dated as of the date of the order approving this plan of reorganization in the following form, to wit:

\$....., 1936

Four (4) months after date, for value received, Garden City Canning Company, a corporation, promises to pay to the order of ....., the sum of..... Dollars (\$.....), being ten per cent (10%) of the amount of the claim of said payee approved and allowed in the proceedings for the reorganization of Garden City Canning Company, a corporation, in the United States District Court for the Northern District of California.

This note is payable at the office of the First National Bank of San Jose, San Jose, California.

This note bears interest at the rate of six per cent (6%) per annum from the date of maturity.

GARDEN CITY CANNING  
COMPANY, a corporation,

By.....

Its President.

No.....

\$....., 1936

Eight (8) months after date, for value received, Garden City Canning Company, a corporation, promises to pay to the order of ....., the sum of..... Dollars (\$.....), being ten per cent (10%) of the amount of the claim of said payee approved and allowed in the proceedings for the reorganization of Garden City Canning Company, a corporation, in the United States District Court for the Northern District of California.

This note is payable at the office of the First National Bank of San Jose, San Jose, California.

This note bears interest at the rate of six per cent (6%) per annum from the date of maturity.

GARDEN CITY CANNING  
COMPANY, a corporation,

By.....

Its President.

No.....

\$....., 1936

One (1) year after date, for value received, Garden City Canning Company, a corporation, promises to pay to the order of ....., the sum of..... Dollars (\$.....), being ten per cent (10%) of the amount of the claim of said payee approved and allowed in the proceedings for the reorganization of Garden City Canning Company, a corporation, in the United States District Court for the Northern District of California.

This note is payable at the office of the First National Bank of San Jose, San Jose, California.

This note bears interest at the rate of six per cent (6%) per annum from the date of maturity.

GARDEN CITY CANNING COMPANY, a corporation,

By..... Its President.

No.....

Debtor proposes to borrow the money with which to make the initial cash payment to its general unsecured creditors and debtor will obtain from the parties advancing said money, an agreement whereby repayment of the money so borrowed will be deferred until the notes referred to herein be paid in full, which said agreement debtor will file with the above entitled court.

## VI.

Debtor will provide for the payment in cash of all costs of administration and other allowances made by the court.

## VII.

No provision is to be made for the stockholders of debtor inasmuch as debtor does not propose any change in its stock structure. Debtor will not pay any dividends to its stockholders until the notes referred to in paragraph V are paid in full.

This plan of reorganization is to become effective when consents by or on behalf of creditors holding more than two-thirds in amount of the claims against debtor, whose claims are provable and allowable and who would be affected by the plan of reorganization, are filed in the office of Honorable Burton J. Wyman, Special Master of the above entitled court, 1095 Market Street, San Francisco, California, and an order is made by the above entitled court approving this plan of reorganization.

[Corporate Seal] GARDEN CITY CANNING  
COMPANY, a corporation,  
By G. J. GRECO

Its President

State of California,  
City and County of San Francisco—ss.

On this 30th day of April, in the year One Thousand Nine Hundred and Thirty-six, before me, Louis Wiener, a Notary Public in and for the said City and County, residing therein, duly commis-

sioned and sworn, personally appeared G. J. Greco, known to me to be the President of the corporation described in and that executed the within and annexed instrument, also known to me to be the person who executed the within instrument, on behalf of the corporation therein named, and he duly acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in said City and County of San Francisco, the day and year in this certificate first above written.

[Seal]                      LOUIS WIENER

Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission expires July 30, 1939. [32]

#### CONSENT TO PLAN OF REORGANIZATION

The undersigned, a general unsecured creditor of Garden City Canning Company, a corporation, with a provable and allowable claim in the sum of \$....., hereby consents to the foregoing plan of reorganization.

.....  
[33]

[Title of District Court and Cause.]

PROOF OF DEBT AND LETTER  
OF ATTORNEY

At....., in the.....Dis-  
trict of....., on the.....day of.....,  
193....., came....., of.....,  
in the.....County of....., in said  
district, personally known to me, and made oath  
and says:

[1] Deponent is the owner of the business known  
as....., and trades under  
that name.

[2] Deponent is one of the firm of.....  
....., consisting of himself and  
.....,  
of....., in the.....county of  
....., and state of.....,  
and is duly authorized to execute the letter of attor-  
ney incorporated herein, and has executed the same  
on behalf of said firm.

[3] Deponent is an officer (or agent), to-wit:  
....., of....., a cor-  
poration incorporated by and under the laws of the  
State of....., and carrying on business  
at ..... in the.....County of  
....., and State of.....,  
and is duly authorized to make this proof and exe-  
cute the letter of attorney incorporated herein, and  
has executed such letter of attorney on behalf of  
said corporation.



[4] Deponent is the attorney (or authorized agent) of \_\_\_\_\_, in the \_\_\_\_\_ County of \_\_\_\_\_, and State of \_\_\_\_\_. This deposition cannot be made by said principal in person because \_\_\_\_\_

\_\_\_\_\_ and deponent is duly authorized by his said principal to make this affidavit, and to execute the letter of attorney incorporated herein and has executed such letter of attorney on behalf of said principal, as it is within his knowledge that the hereinafter mentioned debt was incurred as and for the consideration hereinafter mentioned, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied. [34]

The above named bankrupt, the person by or against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition and still is justly and truly indebted to claimant herein, to-wit: said \_\_\_\_\_, in the sum of \$\_\_\_\_\_, and the nature and consideration of said debt are as follows: A balance due upon an open book account for goods sold and delivered by claimant to said bankrupt within four years last past, bills of items of which account are hereto attached as "Exhibit A" and made part hereof (5)\_\_\_\_\_. No part of said debt has been paid; there are no set-offs or counterclaims to the same; and claimant has not, nor has deponent, nor has any person by claimant's or deponent's order, or to the knowledge or belief of claimant, or deponent, for claimant's, or deponent's, use, had or received any manner of security for said debt whatever. No note has been

received for said account (except the note.....hereto attached as "Exhibit B"), nor any judgment rendered thereon (except as above stated). This claim is free from usury as defined by the laws of the State where the debt was contracted.

Claimant also herewith authorizes.....  
or any one of them, to represent claimant in the bankruptcy proceedings above entitled, including the voting of this claim for trustee or trustees of the estate and upon any proposal or resolution that may be submitted at a meeting of creditors, the accepting of any composition that may be offered by the bankrupt, the receiving of money due as a dividend or upon a composition or otherwise, and the receiving and waiving of notices required by Sec. 58 of the Bankruptcy Act, with full power of substitution; and claimant hereby revokes all letters of attorney heretofore given by claimant in this matter.

In witness whereof, and with the intention of having one individual signature suffice for the above deposition and this letter of attorney, said claimant has hereunto subscribed his name, or, if a corporation, has caused the subscription to be made by said officer or agent as its corporate act, or, if a partnership, has caused such subscription to be made by said member thereof on its behalf, or, if an individual or partnership acting through an agent or attorney, has caused such subscription to be made by such attorney or agent as the act of said principal, this.....day of....., 193.....

Personal signature only.....

Deponent

Claimant or as such officer, member,  
agent or attorney of claimant.

Subscribed, sworn to and acknowledged before  
me this ..... day of ....., 193.....

Notary Public in and for the ....., county of  
....., State of.....

(Place Notarial Seal Here)

### Directions

#### Important

(Original notes and other writings received and  
copies of invoices must be attached. Mere state-  
ments are insufficient.)

If Claimant an Individual Using a Trade Name

Use bracket (1).

If Claimant a Partnership

Use bracket (2).

If Claimant a Corporation

Use bracket (3).

If Claimant an Individual Trading Under His Own  
Name

Ignore brackets (1) to (4) inclusive.

If Claimant an Individual or Partnership Acting  
by Agent

Use brackets (4). Do not make proof this way un-  
less absolutely necessary, as sufficient reasons must  
be given why proof not made by Principal or same  
is void.

**General Directions**

If the consideration is not for goods sold and delivered, blank space (5) can be used to set forth the true consideration. Where the claim is based upon a promissory note, or other writing, the consideration for the same must be stated. If note is given for a cash loan, it will be necessary for the claimant to state the date the money was loaned, the amount, and compute interest up to the date of filing the petition. Consideration regarding goods sold and delivered to be stricken out when using space (5).

The signature at blank space (6) must always be that of the individual who makes the proof. No corporate, partnership, or principal's name must appear here, or the proof will be void.

---

**EXHIBIT "G"**

[Title of District Court and Cause.]

**PROOF OF DEBT AND LETTER OF  
ATTORNEY**

At Yuba City, in the Northern District of California, on the 13th day of....., 1936, came R. J. Sutton, of Yuba City, in the County of Sutter, in said district, [35]

The above named bankrupt, the person by or against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of

said petition and still is justly and truly indebted to claimant herein, to-wit: said R. J. Sutton, in the sum of \$435.77, and the nature and consideration of said debt are as follows: A balance due upon an open book account for goods sold and delivered by claimant to said bankrupt within four years last past, bills of items of which account are hereto attached as—This is for the balance due under a contract of sale and purchase of Peaches delivered by claimant to the bankrupt for the season of 1935. No part of said debt has been paid; there are no set-offs or counterclaims to the same; and claimant has not, nor has deponent, nor has any person by claimant's or deponent's order, or to the knowledge or belief of claimant, or deponent, for claimant's, or deponent's, use, had or received any manner of security for said debt whatever. No note has been received for said account (except the note.....hereto attached as "Exhibit B"), nor any judgment rendered thereon (except as above stated). This claim is free from usury as defined by the laws of the State where the debt was contracted.

Claimant also herewith authorizes Chas. A. Wetmore, Jr. or any one of them, to represent claimant in the bankruptcy proceedings above entitled, including the voting of this claim for trustee or trustees of the estate and upon any proposal or resolution that may be submitted at a meeting of creditors, the accepting of any composition that may be offered by the bankrupt, the receiving of money due

as a dividend or upon a composition or otherwise, and the receiving and waiving of notices required by Sec. 58 of the Bankruptcy Act, with full power of substitution; and claimant hereby revokes all letters of attorney heretofore given by claimant in this matter.

In witness whereof, and with the intention of having one individual signature suffice for the above deposition and this letter of attorney, said claimant has hereunto subscribed his name, or, if a corporation, has caused the subscription to be made by said officer or agent as its corporate act, or, if a partnership, has caused such subscription to be made by said member thereof on its behalf, or, if an individual or partnership acting through an agent or attorney, has caused such subscription to be made by such attorney or agent as the act of said principal, this 13th day of May, 1936.

Personal signature here only

R. J. SUTTON

Deponent

Claimant or as such officer,  
member, agent or attorney  
of claimant.

Subscribed, sworn to and acknowledged before me this 13th day of May, 1936.

[Seal] FLORENCE M. HEWITT

(Place notarial seal here)

Notary Public in and for the....., county of Sutter, State of California.

## Directions

### Important

(Original notes and other writings received and copies of invoices must be attached. Mere statements are insufficient.)

If Claimant an Individual Using a Trade Name

Use bracket (1).

If Claimant a Partnership

Use bracket (2).

If Claimant a Corporation

Use bracket (3).

If Claimant an Individual Trading Under His Own Name

Ignore brackets (1) to (4) inclusive.

If Claimant an Individual or Partnership Acting by Agent

Use brackets (4). Do not make proof this way unless absolutely necessary, as sufficient reasons must be given why proof not made by Principal or same is void.

### General Directions

If the consideration is not for goods sold and delivered, blank space (5) can be used to set forth the true consideration. Where the claim is based upon a promissory note, or other writing, the consideration for the same must be stated. If note is given for a cash loan, it will be necessary for the claimant to state the date the money was loaned, the amount, and compute interest up to the date of

filing the petition. Consideration regarding goods sold and delivered to be stricken out when using space (5).

The signature at blank space (6) must always be that of the individual who makes the proof. No corporate, partnership, or principal's name must appear here, or the proof will be void.

[Endorsed]: Filed June 4, 1936.

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EXHIBIT "H"

[Title of District Court and Cause.]

PROOF OF DEBT AND LETTER OF  
ATTORNEY

(Before filling out blanks, please observe carefully directions on reverse.)

At Yuba City, in the Northern District of California, on the 13th day of May, 1936, came J. J. Heidotting, of Yuba City, in the.....County of Sutter, in said district, personally known to me, and made oath and says:

[1] Deponent is the owner of the business known as....., and trades under that name.

[2] Deponent is one of the firm of....., consisting of himself and....., of....., in the.....county of....., and state of....., and is



duly authorized to execute the letter of attorney incorporated herein, and has executed the same on behalf of said firm.

[3] Deponent is an officer (or agent), to wit: \_\_\_\_\_, of \_\_\_\_\_, a corporation incorporated by and under the laws of the State of \_\_\_\_\_, and carrying on business at \_\_\_\_\_, in the \_\_\_\_\_ County of \_\_\_\_\_, and State of \_\_\_\_\_, and is duly authorized to make this proof and execute the letter of attorney incorporated herein, and has executed such letter of attorney on behalf of said corporation.

[4] Deponent is the attorney (or authorized agent) of \_\_\_\_\_, in the \_\_\_\_\_ County of \_\_\_\_\_, and State of \_\_\_\_\_. This deposition cannot be made by said principal in person because \_\_\_\_\_ and deponent is duly authorized by his said principal to make this affidavit, and to execute the letter of attorney incorporated herein and has executed such letter of attorney on behalf of said principal, as it is within his knowledge that the hereinafter mentioned debt was incurred as and for the consideration hereinafter mentioned, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied. [36]

The above named bankrupt, the person by or against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition and still is justly and truly indebted

to claimant herein, to-wit: said J. J. Heidotting, in the sum of \$308.91, and the nature and consideration of said debt are as follows: A balance due upon an open book account for goods sold and delivered by claimant to said bankrupt within four years last past, bills of items of which account are hereto attached as (5) This is for the balance due under a contract of sale and purchase of Peaches delivered by claimant to the bankrupt for the season of 1935. No part of said debt has been paid; there are no set-offs or counterclaims to the same; and claimant has not, nor has deponent, nor has any person by claimant's or deponent's order, or to the knowledge or belief of claimant, or deponent, for claimant's, or deponent's, use, had or received any manner of security for said debt whatever. No note has been received for said account (except the note.....hereto attached as "Exhibit B"), nor any judgment rendered thereon (except as above stated). This claim is free from usury as defined by the laws of the State where the debt was contracted.

Claimant also herewith authorizes Chas. A. Wetmore, Jr. or any one of them, to represent claimant in the bankruptcy proceedings above entitled, including the voting of this claim for trustee or trustees of the estate and upon any proposal or resolution that may be submitted at a meeting of creditors, the accepting of any composition that may be offered by the bankrupt, the receiving of money due as a dividend or upon a composition or other-

wise, and the receiving and waiving of notices required by Sec. 58 of the Bankruptcy Act, with full power of substitution; and claimant hereby revokes all letters of attorney heretofore given by claimant in this matter.

In witness whereof, and with the intention of having one individual signature suffice for the above deposition and this letter of attorney, said claimant has hereunto subscribed his name, or, if a corporation, has caused the subscription to be made by said officer or agent as its corporate act, or, if a partnership, has caused such subscription to be made by said member thereof on its behalf, or, if an individual or partnership acting through an agent or attorney, has cause such subscription to be made by such attorney or agent as the act of said principal, this 13th day of May, 1936.

Personal signature here only (6)

J. J. HEIDOTTING

Deponent

(Do not sign Firm or Corporate Name)

Claimant or as such officer, member, agent or attorney of claimant.

Subscribed, sworn to and acknowledged before me this 13th day of May, 1936.

[Seal] FLORENCE M. HEWITT

(Place notarial seal here)

Notary Public in and for the....., county of Sutter, State of California.

## Directions

## Important

(Original notes and other writings received and copies of invoices must be attached. Mere statements are insufficient.)

If Claimant an Individual Using a Trade Name.

Use bracket (1).

If Claimant a Partnership

Use bracket (2).

If Claimant a Corporation

Use bracket (3).

If Claimant an Individual Trading Under His Own Name

Ignore brackets (1) to (4) inclusive.

If Claimant an Individual or Partnership Acting by Agent

Use brackets (4). Do not make proof this way unless absolutely necessary, as sufficient reasons must be given why proof not made by Principal or same is void.

## General Directions

If the consideration is not for goods sold and delivered, blank space (5) can be used to set forth the true consideration. Where the claim is based upon a promissory note, or other writing, the consideration for the same must be stated. If note is given for a cash loan, it will be necessary for the claimant to state the date the money was loaned, the amount, and compute interest up to the date of filing the petition. Consideration regarding goods

sold and delivered to be stricken out when using space (5).

The signature at blank space (6) must always be that of the individual who makes the proof. No corporate, partnership, or principal's name must appear here, or the proof will be void.

[Endorsed]: Filed June 4, 1936.

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EXHIBIT "I"

[Title of District Court and Cause.]

PROOF OF UNSECURED DEBT.

At Yuba City, in said District of California, on the 29th day of February, A. D. 1936, came John Saunders, of Yuba City, in the County of Sutter, in said District of California, and made oath, and says that Garden City Canning Company, a corporation, the person by (against) whom a petition for Adjudication of Bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent, in the sum of Fifteen Hundred Seventy-seven and 70/100 Dollars; that the consideration of said debt is as follows: Balance due under contract on sale of Tuscan peaches for year 1935, that no part of said debt has been paid (except.....); that there are no set-offs or counterclaims to the same (except.....); and that deponent has not, nor has any person by his order, or to his knowledge or belief

for his use, had or received any manner of security for said debt whatever.

And deponent further says that no note has been received for such account, nor any judgment rendered thereon.

JOHN SAUNDERS

Creditor.

Subscribed and sworn to before me, this 29th day of February A. D. 1936.

[Seal]

LOYD E. HEWITT

Court Commissioner of Sutter  
County, California

(Official Character.)

[Reverse not filled in.]

[Endorsed]: Filed Jun. 4, 1936. [37]

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EXHIBIT "J"

[Title of District Court and Cause.]

PROOF OF UNSECURED DEBT.

At Yuba City, in said District of California, on the 29th day of February, A. D. 19....., came J. B. Bowen, of *Bakerfield*, in the County of Kern, in said District of California and made oath, and says that Garden City Canning Company, a corporation the person by (against) whom a petition for Adjudication of Bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent, in the sum of

Six Hundred and Twenty-five Dollars; that the consideration of said debt is as follows: Balance due on sale of Palore Peaches for the year 1935 that no part of said debt has been paid (except.....); that there are no set-offs or counterclaims to the same (except.....); and that deponent has not, nor has any person by his order, or to his knowledge or belief for his use, had or received any manner of security for said debt whatever.

And deponent further says that no note has been received for such account, nor any judgment rendered thereon.

J. B. BOWEN

Creditor.

By W. M. ADDY

Subscribed and sworn to before me this 29th day of February, A. D. 1936.

[Seal]

FLORENCE M. HEWITT

Notary Public  
(Official Character.)

[Reverse not filled in.]

[Endorsed]: Filed June. 4, 1936. [38]

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EXHIBIT "K"

[Title of District Court and Cause.]

PROOF OF UNSECURED DEBT.

At Yuba City, in said District of California, on the 29th day of February, A. D. 1936, came W. M.

Addy, of Yuba City, in the County of Sutter, in said District of California and made oath, and says that Garden City Canning Company the person by (against) whom a petition for Adjudication of Bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent, in the sum of Nine Hundred Thirty-four and 57/100 Dollars; that the consideration of said debt is as follows: Balance due under contract on sale of Peaches for year 1935 that no part of said debt has been paid (except .....); that there are no set-offs or counter-claims to the same (except.....); and that deponent has not, nor has any person by his order, or to his knowledge or belief for his use, had or received any manner of security for said debt whatever.

And deponent further says that no note has been received for such account, nor any judgment rendered thereon.

W. M. ADDY

Creditor.

Subscribed and sworn to before me this 29th day of February, A. D. 1936.

[Seal]

FLORENCE M. HEWITT

Notary Public  
(Official Character.)

[Reverse not filled in.]

[Endorsed]: Filed Jun. 4, 1936. [39]



EXHIBIT "L"

[Title of District Court and Cause.]

PETITION FOR CONFIRMATION OF  
REORGANIZATION PLAN

To Honorable Burton J. Wyman, Special Master  
of the Above Entitled Court:

The petition of Garden City Canning Company, a corporation, the debtor herein, respectfully shows:

That on the 6th day of February, 1936, your petitioner filed its petition herein under and pursuant to the provisions of Section 77-B of the Bankruptcy Act for leave to submit a plan of reorganization; that on the 6th day of February, 1936, this court made its order approving said petition as properly filed and per- [40] mitting the debtor to remain in possession of its property and assets, and directing it to give notice to its creditors and stockholders of a hearing to be held on the 2nd day of March, 1936, for the purpose of determining whether a trustee should be appointed or whether the debtor should be allowed to remain in possession, notice of which said hearing was duly given by mail and by publication as in and by said order directed.

That thereafter and on or about the 14th day of February, 1936, your petitioner filed a list of all known creditors of or claimants against debtor or its property, and the last known postoffice address of each; also a list of debtor's stockholders, with their respective last known addresses.

That at the aforesaid hearing on the 2nd day of March, 1936, the court ordered that the debtor be

permitted to remain in permanent possession of its assets until the rejection or confirmation of its plan of reorganization or the dismissal of the proceedings, and referred all proceedings in connection with said reorganization to Honorable Burton J. Wyman, as Special Master.

That by said order of March 2nd, 1936, all creditors of debtor were directed to file proofs of claim with said Special Master on or before the 15th day of June, 1936, notice whereof was given all creditors by mail and by publication as in and by said order provided.

That on or about the 6th day of April, 1936, pursuant to the aforesaid order of March 2nd, 1936, petitioner filed a schedule of its assets and liabilities.

That none of the shares of stock in the debtor corporation have been transferred after the commencement or in contemplation of this proceeding.

That on the 1st day of May, 1936, petitioner presented a proposed plan of reorganization.

That thereafter there were filed in these proceedings con- [41] sents of general unsecured creditors having claims aggregating \$18,108.13, constituting more than two-thirds in amount of all filed claims; that Pacific Can Company, a secured creditor, is not affected by said plan of reorganization; that attached hereto and marked Exhibit "A" is the agreement of the Greco Canning Company for the subordination of its claim as in said plan provided;

that John Albertoli, a creditor holding a conditional sales contract, has filed his consent to said plan of reorganization; that none of the stockholders of debtor are affected by the plan of reorganization.

That annexed hereto and made a part hereof and marked Exhibit "B" is a list of all proofs of claim which have been filed herein within the time within which claims could be filed; that none of said claims are entitled to priority of payment.

That the offer and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by the Bankruptcy Act.

That all amounts to be paid by the debtor are fully disclosed by the proposed reorganization plan with the exception of the expenses of administration to be fixed by the court and to be paid in cash on the confirmation of the plan and the fee to your petitioner's attorneys; that your petitioner has paid its attorneys the sum of Twenty-five Hundred Dollars (\$2500.00), which sum your petitioner alleges is a fair and reasonable fee to them.

That said reorganization plan is fair and equitable and does not discriminate unfairly in favor of any class of creditors; that it is feasible and complies with the provisions of Section 77-B of the Bankruptcy Act.

That your petitioner has not rejected any unexpired leases and that there were no executory con-

tracts outstanding at the time of the filing of the petition herein, with the exception of a lease from the Greco Canning Company to your petitioner.

[42]

Wherefore, your petitioner prays that a meeting of creditors be called and held herein to consider said plan; that the form of notice to creditors attached hereto and marked Exhibit "C" be approved by the court; that at said meeting of creditors said plan of reorganization be examined and that an order be made confirming said plan, and for such further and other order as may be just and proper in the premises.

GARDEN CITY CANNING  
COMPANY,

a corporation

By G. J. GRECO

Its President

LOUIS ONEAL and  
TORREGANO & STARK  
By ERNEST J. TORREGANO  
Attorneys for Debtor.

United States of America  
Northern District of California  
County of Santa Clara—ss.

G. J. Greco, being first duly sworn, deposes and says:

That he is an officer, to-wit, President of the corporation named in the foregoing Petition, and duly

authorized to make this verification for and on behalf of said corporation;

That he has read said petition, knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

G. J. GRECO

Subscribed and sworn to before me this 2nd day of October, 1936.

[Seal]

C. E. LUCKHARDT

Notary Public in and for the County of Santa Clara,  
State of California. [43]

### EXHIBIT "B"

#### LIST OF UNSECURED CLAIMS ON FILE

Food Machinery Co.....	\$	3.08
Jerome C. Bean.....		2.83
Fire Protection Eng'g Co.....		3.22
Markovitz & Fox.....		3.86
National Adhesive Corporation.....		6.18
San Jose Hardware Co.....		3.04
Anderson Stamp Co.....		20.93
Roy M. Butcher.....		350.85
Bay City Tying Wire Service Co.....		53.00
George Botelho .....		26.78
California Container Corporation.....		607.83
Canners League of California.....		149.20
Chase Lumber Co.....		16.30
Can Pack Machinery Co. Inc.....		50.60
W. P. Fuller Co.....		17.19
Garratt & Callahan Co.....		43.26
Rudolph Gervassio .....		703.84
F. Hohwiesner & Co.....		22.21
Fred Hayden .....		34.50
C. W. Marwedel.....		13.21
Marshall-Newell Supply Co.....		85.64
Federal Pitter Co.....		2,562.50
L. F. Noonan Co. Inc.....		3,145.24

Pacific Fire Ext. Co.....	90.00
San Jose Supply House.....	186.16
J. S. Smith Mfg. Co.....	400.53
San Jose Foundry.....	84.67
Valley Truck Line.....	342.46
Western Met. & Exp. Co.....	135.10
Warren & Bailey.....	36.38
P. A. Everett.....	1,211.97
Gloor & Farrand.....	4,668.32
Marie H. Hauck.....	75.31
Meschendorf & Winship.....	2,969.13
Press Smith .....	1,163.00
	<hr/>
Total.....	\$19,288.32

[Endorsed]: Filed Nov. 4, 1936. [44]

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EXHIBIT "M"

[Title of District Court and Cause.]

ORDER CALLING MEETING OF CREDITORS  
AND APPROVING FORM OF NOTICE  
THEREOF

The debtor above named having filed herein its petition for confirmation of the reorganization plan heretofore filed by it and having prayed that a meeting of creditors be called to examine said plan and having tendered a form of notice thereof,

It Is Hereby Ordered that a meeting of creditors of Garden City Canning Company be held on the 16 day of November, 1936, at the hour of 2 o'clock ..... M. of said day, at the office of the undersigned, Room 609 Grant Building, 1095 Market Street, San Francisco, California. [45]

It Is Further Ordered that the form of notice attached to said debtor's petition for confirmation of reorganization plan be and the same is hereby approved.

Dated this 4 day of November, 1936.

BURTON J. WYMAN

Referee in Bankruptcy, as  
Special Master

[Endorsed]: Filed Nov. 4, 1936. [46]

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EXHIBIT "N"

[Title of District Court and Cause.]

SPECIAL MASTER'S REPORT RECOMMENDING CONFIRMATION OF REORGANIZATION PLAN.

To Honorable Harold Louderback, Judge of the United States District Court for the Northern District of California:

The undersigned, to whom the above entitled proceedings in reorganization were referred for consideration and report, hereby reports to the court as follows:

That on the 1st day of May, 1936, the debtor above named filed with the clerk of the above entitled court its plan of reorganization wherein and whereby said debtor proposed to pay to all of its general unsecured creditors 50% of the amount of their claims in the following manner: [47]

To all claimants whose claims are less than \$10.00, 50% of the amount of their claim in cash upon the entry of the order approving the plan of reorganization;

To all other general unsecured creditors, 20% of the amount of their claims in cash upon the entry of said order, 10% of the amount of their claims four months thereafter, 10% eight months thereafter, and 10% of the amount of their claims one year after the entry of said order, said deferred payments to be represented by promissory notes.

And wherein and whereby said debtor proposed to discharge its indebtedness due to secured creditors as follows:

To pay the claim of Pacific Can Co. in accordance with the terms of its contract with Pacific Can Co.;

Not to pay anything to Greco Canning Company until the general unsecured creditors are paid as provided for in said plan; and

To pay John Albertoli on his secured claim at the rate of \$140.00 a month commencing with the date of the order approving the plan.

That pursuant to notice given by said debtor to its creditors, thirty-five creditors of said debtor filed and propounded herein their claims, which said claims amount to the sum of \$19,288.32; a list of said claims is attached to the petition for confirmation of reorganization plan forwarded with this report.



That general unsecured creditors having claims aggregating \$18,108.13, constituting more than two-thirds in amount of all filed claims, have filed their consents to the said plan of reorganization.

That only two creditors failed to file consents to said plan of reorganization, namely, Press Smith with a claim of \$1163.00, and W. P. Fuller & Co., with a claim of \$17.19. That Pacific Can Co is not affected by this plan of reorganization, and that a consent of said Pacific Can Co. to said plan of reorganization is unnecessary; that Greco Canning Company and John Albertoli have filed their consents to said plan of reorganization.

That thereafter, said debtor filed with me its petition for confirmation of reorganization plan, which said petition is transmitted herewith. [48]

That thereafter, I made an order calling a meeting of the creditors of said debtor to be held on the 16th day of November, 1936, at the hour of 2:00 o'clock P. M. of said day for the purpose of examining and passing upon said plan of reorganization; that pursuant to said order, said debtor gave ten days notice in writing to each of its creditors and stockholders of said meeting, and on the day set for said meeting Mr. G. J. Greco, the president of debtor corporation, was examined by me; that none of the creditors of said debtor appeared at said meeting.

That the petition for reorganization under and pursuant to the provisions of Section 77-b of the Bankruptcy Act was filed on the 6th day of Feb-

ruary, 1936, and that on said day an order was made approving said petition as properly filed and permitting the debtor to remain in possession of its property and assets and directing it to give notice to its creditors and stockholders of a hearing to be held on the 2nd day of March, 1936, for the purpose of determining whether a trustee should be appointed or whether the debtor should be allowed to remain in possession; that at the aforesaid hearing on the 2nd day of March, 1936, the court ordered that the debtor be permitted to remain in possession of its assets until the rejection or confirmation of its plan of reorganization or the dismissal of the proceedings and referred all proceedings in connection with the said reorganization to the undersigned as special master.

That by said order of March 2, 1936, all creditors of the debtor were directed to file proofs of claim with said special master on or before the 15th day of June, 1936, notice whereof was duly given by the debtor to all creditors by mail and published as and by said order provided; that on the 10th day of April, 1936, pursuant to the aforesaid order of March 2, 1936, the debtor filed a schedule of its assets and liabilities; that none of the shares of stock in the debtor corporation have been transferred after the commencement or in contemplation of this proceeding; that it appeared from the testimony of G. J. Greco that the offer and acceptance were made in good faith and have not been made or procured by any means or promises

forbidden by the Bankruptcy Act, and that said reorganization plan is fair and equitable and does not discriminate unfairly in favor of any creditor or creditors, and that it is feasible and complies with the provisions of Section 77-b of the Bankruptcy Act.

That said debtor has not rejected any unexpired leases and that there were no executory contracts outstanding at the time of the filing of the petition herein, with the exception of a lease from the Greco Canning Company to said debtor.

That the amounts to be paid by the debtor are fully disclosed by the reorganization plan, with the exception of the expenses of administration to be paid in cash on the confirmation of the plan and the fee to the attorneys for said debtor; that said debtor has paid its attorneys the sum of \$2,500.00, which is a fair and reasonable fee to them.

That Press Smith, a creditor of said debtor who has filed his claim with me, prior to the commencement of these proceedings commenced a suit against the debtor in the Superior Court of the State of California, in and for the County of Yuba, and caused an attachment to be levied on moneys deposited to the credit of the debtor with the Anglo-California National Bank of San Francisco, which said attachment should be ordered released.

That Yuba Gardens, prior to the filing of the petition for reorganization filed an action against the debtor to recover the sum of \$540.47; that the debtor failed to schedule Yuba Gardens as a cred-

itor by reason of the fact that the account of said Yuba Gardens appeared on the books of said debtor as fully paid; that for the purpose of these proceedings the debtor is willing to recognize the claim of Yuba Gardens, and to pay said Yuba Gardens on the same basis that it is paying its creditors pursuant to said plan of reorganization, and the undersigned recommends that the debtor be given leave to so pay said Yuba Gardens. [50]

That the debtor has presented to me the form of order approving the plan of reorganization which it proposes to present to the court. I have examined the same and have found it to be satisfactory. A copy of said proposed order is attached hereto and marked Exhibit "A".

#### Compensation and Expenses of Special Master

It is my opinion that the sum of \$25.00 for one hearing, and the preparation of this certificate and report is reasonable compensation to be allowed for my services as special master herein, and I respectfully request such allowance. My expenses as special master, including the fee of the stenographic reporter and office and clerical charges amount to \$15.00 which I believe to be a reasonable allowance therefor, and I respectfully request such allowance.

#### Recommendations of Special Master

In view of the fact that all parties affected by the proposed plan of reorganization are practically in unanimous accord therewith, I am of the opinion that the proposed order, (a copy of which is attached hereto), wherein the approval of the pro-

posed plan of reorganization is sought to be decreed, should be made the order of this court, and I hereby recommend the signing of the original of said order.

Papers Handed Up Herewith

I hand up herewith the following papers:

- (1) Affidavit of Publication;
  - (2) Notice to Creditors and Stockholders of Entry of Order;
  - (3) Consent of Meschendorf & Winship and Charles S. Gloor and Charles H. Farrand to plan of reorganization;
  - (4) Acceptances of Plan of Reorganization;
  - (5) Petition for Confirmation of Reorganization Plan;
  - (6) Order Calling Meeting of Creditors and Approving Form of Notice Thereof;
  - (7) Notice to Creditors of Hearing on Plan; and
  - (8) Envelope containing miscellaneous papers.
- Dated: December 2, 1936.

Respectfully submitted,  
BURTON J. WYMAN,  
Special Master.

[Endorsed]: Filed Dec. 2, 1936. [51]

## EXHIBIT "O"

[Title of District Court and Cause.]

ORDER APPROVING PLAN OF  
REORGANIZATION.

This cause coming on to be heard upon motion of the debtor herein and in accordance with the report of Honorable Burton J. Wyman, Referee in Bankruptcy and Special Master in the above entitled cause, for the approval of the report of said special master in relation to the reference to him in the above entitled cause, the debtor appearing by Messrs. Louis Oneal and Torregano & Stark, and no adverse interests appearing, and the court having examined the report of the special master and being fully advised in the premises,

It Is Hereby Ordered that the report of Honorable Burton J [52] Wyman, Referee in Bankruptcy and Special Master, be and the same is hereby fully approved and confirmed to stand as the findings of this court.

It is Further Ordered that the plan of reorganization proposed by the debtor and accepted by creditors holding claims exceeding two-thirds in amount of all claims filed in these proceedings be and the same is hereby approved.

It Is Further Ordered that the debtor proceed forthwith to execute and carry into effect the said plan of reorganization as so approved and confirmed by paying all of the expenses of administration, including the fee of the special master

as set forth in said special master's report and by delivering to all its general unsecured creditors the cash consideration and the promissory notes provided for in said plan of reorganization, and to otherwise perform and carry out and cause to be performed and carried out all of the acts and transactions on its part required to be performed and carried out pursuant to said plan of reorganization.

It is Further Ordered that the attachment issued in that certain action commenced by Press Smith against the debtor above named in the Superior Court of the State of California in and for County of Yuba, and levied upon funds belonging to said debtor in the possession of the Anglo-California National Bank of San Francisco, be and the same is hereby vacated and said The Anglo-California National Bank of San Francisco be and it is hereby authorized and directed to deliver said funds held by it pursuant to said writ of attachment to the debtor above named.

It Is Further Ordered that the debtor report in writing to this court within one week from the date of this order all acts and things done and performed by it in the carrying out of said plan, and that said debtor render a final report in writing to this court of all things done and performed by it in the carrying [53] out of said plan within fifty-four weeks from the date of this order.

Done In Open Court this 15th day of December, 1936.

HAROLD LOUDERBACK

United States District Judge.

[Endorsed]: Filed Dec. 15, 1936. [54]

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EXHIBIT "P"

[Title of District Court and Cause.]

REPORT OF DEBTOR OF COMPLETE EXECUTION AND ACCOMPLISHMENT OF CONFIRMED PLAN OF REORGANIZATION AND PETITION FOR FINAL DECREE.

Now comes the debtor above named and presents this its report of compliance with the terms and provisions of the plan of reorganization heretofore confirmed by this court, and respectfully shows to the court:

That all costs of administration, claims entitled to priority of payment, and other allowances as fixed by order of this court, together with attorneys' fees, have been paid;

That your petitioner has paid all of its secured claims [55] as provided for in the plan of reorganization heretofore confirmed by the above entitled court;



That your petitioner has paid to all of its general unsecured creditors whose claims were less than \$10.00, 50% of the amount of their claim in cash immediately following the entry of the order approving the plan of reorganization;

That your petitioner has paid to the remaining unsecured creditors 20% of the amount of their claims in cash, and has paid in full the notes executed and delivered to said creditors pursuant to the plan of reorganization for an additional 30% of their claims;

That no provisions were made in the plan of reorganization for the stockholders of the debtor, inasmuch as the debtor did not propose any change in its stock structure;

Wherefore, the debtor prays that this court enter a final decree:

(a) Approving this report;

(b) Finding and decreeing that the plan of reorganization heretofore confirmed has been fully executed, accomplished and carried out in accordance with all of the terms and provisions of said plan of reorganization and the orders of this court in connection therewith;

(c) Discharging the debtor from all of its debts, claims and liabilities, excepting such debts as are by law excepted from the operation of a discharge in bankruptcy;

(d) Terminating and finally closing the above entitled proceedings;

(e) And for such further and other order as may be just and proper in the premises.

GARDEN CITY CANNING COMPANY,  
a corporation.

By G. J. GRECO,  
Its President.

LOUIS ONEAL  
TORREGANO & STARK,  
Attorneys for Debtor. [56]

United States of America  
Northern District of California  
County of Santa Clara—ss.

G. J. Greco, being first duly sworn, deposes and says:

That he is an officer, to-wit, President of the corporation named in the foregoing Report of Debtor, and duly authorized to make this verification for and on behalf of said corporation;

That he has read said report, knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

G. J. GRECO.

Subscribed and sworn to before me this 11th day of January, 1938.

[Seal] ZOE WECKLEM,  
Notary Public in and for the County of Santa Clara, State of California.

[Endorsed]: Filed Jan. 12, 1938. [57]

EXHIBIT "Q"

[Title of District Court and Cause.]

CERTIFICATE AND REPORT OF SPECIAL  
MASTER ON OBJECTION TO REPORT  
AND FINAL DISCHARGE OF DEBTOR

To Honorable Harold Louderback, United States  
District Judge for the Northern District of  
California:

I, Burton J. Wyman, one of the referees in bankruptcy of this court to whom, as special master, was referred the petition of certain creditors objecting to report and final discharge of the above named debtor, with directions to make findings of fact, report, recommendations and conclusions of law, respectfully certify and report:

On the 22nd day of January, 1938, the following verified petition was filed in this court: [58]

"The petition of John Saunders, W. M. Addy, J. B. Bowen, R. J. Sutton and J. J. Heidothing, by their attorney Loyd E. Hewitt, respectfully shows, and said petitioner alleges:

"I.

"That on the 6th day of February, 1936, Garden City Canning Company, a corporation, who is the above named debtor, filed with the above entitled court its petition for reorganization under Section 77b of the Acts of Congress relating to bankruptcy; that thereafter and on February 8th, 1936, the above entitled

court made its order approving the debtor's petition; that thereafter and on March 3rd, 1936, there was filed with the above entitled court the debtor's verified schedule of creditors and stockholders, and among the creditors were the names of the petitioners herein set forth and their addresses; that thereafter and on the 14th day of March, 1936, the above entitled court made its order permitting the debtor to remain in permanent possession of its assets until rejection or confirmation of its plan of reorganization, or dismissal of the proceedings that thereafter and on the 10th day of April, 1936, the above named debtor filed with the above entitled court its schedule of assets and liabilities, and amongst its liabilities mentioned the names of all of the petitioners and the amounts which it owed said petitioners, except that the amount set after the name of John Saunders was less than the amount due him from said debtor; that thereafter and on the 20th day of April, 1936, the affidavit of publication of notice to creditors and stockholders was filed with the above entitled court; [59] that thereafter and on the 1st day of May, 1936, the above named debtor filed with the above entitled court its plan of reorganization, setting forth the names of the petitioners herein with the amounts due said petitioners, except that the amount set after the name of John Saunders as due him was

less than the amount actually due said John Saunders; that thereafter and on the 30th day of July, 1936, there was filed with the above entitled court acceptance of the plan of reorganization by said creditors; that thereafter and on November 4th, 1936, the petition of the above named debtor for confirmation of its reorganization plan was filed with the above entitled court; that thereafter and on November 4th, 1936, the above entitled court made its order calling a meeting of the creditors and approving the form of notice thereof to examine said plan of reorganization, and set the date of said hearing for the 16th day of November, 1936, at the hour of 2:00 o'clock P. M.; that thereafter and on the 2nd day of December, 1936, Honorable Burton J. Wyman, a referee in bankruptcy, filed with the above entitled court his special master's report recommending the confirmation of the reorganization plan of the above named debtor; that thereafter and on December 15th, 1936, the above entitled court made its order approving the plan of reorganization of the above named debtor; that thereafter and on the 12th day of January, 1938, the above entitled court made its order that notice be given to creditors approving the former and notice for hearing debtor's report of complete execution and accomplishment of the confirmed plan of reorganization. [60]

## “II.

“That on the 4th day of June, 1936, W. M. Addy filed with the above entitled court his proven claim against the debtor in the sum of \$934.57; that on the 4th day of June, 1936, John Saunders filed with the above entitled court his proven claim against the debtor in the sum of \$1577.70; that on the 4th day of June, 1936, J. B. Bowen filed with the above entitled court his proven claim against the debtor in the sum of \$625.00; that on the 4th day of June, 1936, R. J. Sutton filed with the above entitled court his proven claim against the debtor in the sum of \$435.77; that on the 4th day of June, 1936, J. J. Heidothing filed with the above entitled court his proven claim against the debtor in the sum of \$308.91.

## “III.

“That according to the notice to creditors hereinbefore mentioned in paragraph I hereof, the petitioners as creditors of the above named debtor had to and including the 15th day of June, 1936, within which to file their said claims against said debtor.

## “IV.

“That all of the creditors of said debtor with the exception of your petitioners have received the amount due them according to the plan of reorganization which was confirmed by the above entitled court as in paragraph I hereof

set forth, and that your said petitioners have received nothing in payment of their said claims.

“Wherefore, your petitioners pray that said report be not accepted or approved; that said debtor be not discharged; that the above entitled court make its order that before said debtor is finally discharged that it be caused to pay to said petitioners, and each of them, the [61] amount due said petitioners according to their proven claim on the same percentage basis on which the other unsecured creditors of said debtor were paid, and for such other and further relief as to this court may seem meet and equitable in the premises.

“LOYD E. HEWITT

“Attorney for Petitioners”.

“State of California,

“City and County of San Francisco—ss.

“Lloyd E. Hewitt, being duly sworn, deposes and says:

“That he is the attorney for the petitioners named in the within petition; that he has read the above and foregoing petition, and the same is true of his own knowledge, except as to matters therein stated on his information and belief, and as to those matters he believes it to be true; that he makes this verification on behalf of said petitioners for the reason that he has a better knowledge of what has happened than said petitioners, and for the further reason

that he is now in the City and County of San Francisco and is not in the county in which said petitioners reside.

“LOYD E. HEWITT

“Subscribed and sworn to before me this 22nd day of January, 1938.

[Seal]                      EMI EGGERS DEL BONO  
“Notary Public in and for the City and County  
of San Francisco, State of California.”

(See original thereof on file in the office of the clerk of this court.) [62]

Thereafter, and on the 24th day of January, 1938, the following affidavit in support of said petition was filed in said court:

“State of California,  
“City and County of San Francisco—ss.

“Loyd E. Hewitt being duly sworn deposes and says: that he is an attorney-at-law and entitled to practice law in all of the Courts of the State of California, and in the United States District Court in the Northern District of California; that he filed the several claims of John Saunders, W. M. Addy, J. B. Bowen, R. J. Sutton and J. J. Heidothing, against the above named debtor, with the clerk of the above entitled court, in San Francisco, California on the fourth day of June 1936; that said claims were mailed by the said Loyd E. Hewitt to the Clerk of the United States District Court, at San Francisco, California; that said Clerk, by



his deputy, acknowledged receipt of said claims on the fourth day of June, 1936, by making a notation at the bottom of the letter herein before mentioned; that a copy of said letter with said notation is attached hereto, marked exhibit "A", and made a part hereof by reference; that prior to the 12th day of November, 1936, this affiant received notice of a creditors meeting to hear the reorganization plan of the above named debtor to be held before the Hon. Burton J. Wyman on the 16th day of November, 1936, at 2 o'clock P. M.; that on the 12th day of November, 1936, this affiant wrote and mailed a letter, postage prepaid, addressed to Hon. Burton J. Wyman, Referee in Bankruptcy, at 609 Grant Building, San Francisco, California; that said letter [63] was deposited in the U. S. mail at the Post Office in Yuba City, California; that there is a regular daily communication by mail between said city of Yuba, California and the city of San Francisco, California; that a copy of said letter is hereunto attached marked exhibit "B" and made a part hereof by reference; that this affiant never received an answer to said letter, nor was he ever informed that said claims herein before mentioned had never been delivered to said Hon. Burton J. Wyman, special master in the above entitled matter, by the clerk, as required by law; that on or about the 10th day of August 1937, this affiant learned that

some of the other creditors of the above named debtor, had received payments on their claims and that the claimants for whom this affiant filed claims had received nothing in payments on their claims; that on the 10th day of August 1937, this affiant mailed a letter addressed to Hon. Burton J. Wyman, Referee in Bankruptcy at 609 Grant Building, San Francisco, California, that postage on said letter was prepaid and said letter was mailed at the United States Post Office in the City of Yuba City, California; that a copy of said letter is attached hereto, marked exhibit "C" and made a part hereof; that this affiant never received an answer to said letter; that the office of said Hon. Burton J. Wyman is at 609 Grant Building, San Francisco, California, and was at said address since and before the 12th day of November, 1936, that on the same day, to-wit; the 10th day of August, 1937, this affiant mailed a letter to the Clerk of the United States District Court at San Francisco, California, a copy of which said letter is attached hereto marked exhibit "D" and made a part hereof by reference; that this affiant received a letter in answer to this last [64] mentioned letter signed by a deputy clerk of the United States District Court for the Northern District of California, that a copy of said letter is attached hereto, marked exhibit "E" and made a part hereof by reference; that said claims filed by

this affiant are still on file with the Clerk of the above entitled court, that the affiant called at the office of said Hon. Burton J. Wyman, in the fall of 1937 to inquire why the claims mentioned herein, had not been paid, on the first two of these occasions he was unable to contact the said Hon. Burton J. Wyman, but on the third call he met the said Hon. Burton J. Wyman and this affiant was informed, by him, that the reason said claims had not been paid was because he had never received them, that this affiant makes this affidavit in support of the petition filed by him, in the above entitled matter on the 22nd day of January, 1938; which said petition objects to the discharge of the above named debtor and prays for relief for the claimants mentioned herein who have not been paid on their said claims.

“LOYD E. HEWITT

“Subscribed and sworn to before me this 24th day of January, 1938.

“[Seal]                      JANE O’CONNOR

“Notary Public in and for the City and County of San Francisco, State of California.”

## “EXHIBIT ‘A’

“June 3d, 1936.

“Clerk of the United States District Court, of  
the Northern District of California, San  
Francisco, California.

“Dear Sir:—Re: Garden City Canning Com-  
pany, Debtor. [65]

“Enclosed please find the claims of W. M.  
Addy, in the sum of \$934.57; of John Saunders  
in the sum of \$1577.70; of J. B. Bowen, in the  
sum of \$625.00; of R. J. Sutton, in the sum  
of \$435.77 and J. J. Heidotting in the sum of  
\$308.91, all claims being against the above  
named bankrupt or debtor, Garden City Can-  
ning Company, a corporation.

“Will you please file the same and see that  
they are referred to the proper referee. The  
last day of filing is June 15th, 1936.

“Will you kindly acknowledge receipt of  
said claims for my record, and if there is any  
charge for the filing or sending of the acknowl-  
edgement kindly bill me for the same.

“If these are not in proper form will you  
return them to me by return mail at my ex-  
pense, stating in what portion they should be  
amended or corrected?

“Thanking you very kindly in advance for  
your attention in this matter, I am,

“Yours very truly,

“LEH/FH

“LOYD E. HEWITT.”

“6/4/36

“Dear Sir:

“This will acknowledge receipt of the five claims mentioned above in the matter of Garden City Canning Co., Debtor.

“Yours very truly,

“W. B. MALING, Clerk.

“By C. M. TAYLOR,  
Deputy Clerk”

“EXHIBIT ‘B’

“November 12th, 1936

“Hon. Burton J. Wyman,  
“Referee in Bankruptcy,  
“609 Grant Building,  
“San Francisco, California.

“Dear Sir:—Re: Garden City Canning Company No. 26284 L.

“I received a notice to creditors of a hearing of a reorganization plan of the above named debtor which takes place on the 16th day of November, 1936, at 2 o'clock P. M. [66]

“I represent several creditors in this company who have not agreed to the reorganization plan, namely, Saunder, Addy and Bowman.

“I will be unable to be present on the 16th as I am in Court here on that date.

“Will you be kind enough to advise me the amount of debts against the corporation and of those who voted in favor of your organization and the amount of the claims which each of them have against the debtor?”

“Thanking you very kindly in advance, I am,

“Yours very truly,

“LEH/FH

“LOYD E. HEWITT”

“EXHIBIT ‘C’

“August 10, 1937

“Hon. Burton J. Wyman

“Referee in Bankruptcy

“609 Grant Building

“San Francisco, California

“Dear Sir:

“Re: Garden City Canning Company,  
No. 26284 L

“On June 3rd, 1936, I filed the following claims with the Clerk of the United States District Court in San Francisco, to-wit: W. M. Addy, in the sum of \$934.57; of John Saunders in the sum of \$1577.70; of J. B. Bowen, in the sum of \$625.00; of R. J. Sutton, in the sum of \$435.77 and J. J. Heidotting in the sum of \$308.91.

“These claimants have not as yet received any sum whatsoever and I understand that payments have been made to other claimants.

“Will you kindly advise me why the claimants for whom I filed claims have not received the money due them?”

LEH/kj                      “Very truly yours,  
   “LOYD E. HEWITT”

“EXHIBIT ‘D’

“August 10, 1937

“Clerk of the United States District Court of the Northern District of California, San Francisco, California.

“Re: Garden City Canning Company, Debtor.  
[67]

“Dear Sir:

“On June 3rd, 1936, I mailed to you the claims of W. M. Addy in the sum of \$934.47; of John Saunders in the sum of \$1577.70; of J. B. Bowen, in the sum of \$625.00; of R. J. Sutton, in the sum of \$435.77 and J. J. Heidotting in the sum of \$308.91, all claims being against the above named debtor, Garden City Canning Company, and on June 4th, 1936, you returned my letter with this notation:

“ ‘Dear Sir:

“ ‘This will acknowledge receipt of the five claims mentioned above in the matter of Garden City Canning Co., Debtor.’

“ ‘Yours very truly,

“ ‘W. B. MALING, Clerk,

“ ‘By C. M. TAYLOR,

“ ‘Deputy Clerk.’

“I believe Taylor is the name of the deputy that signed the notation.

“It is my understanding that the other creditors have received payments on their claims, but none of these creditors for whom I have filed claims with you have received any payment whatsoever.

“Will you kindly advise me why these claims have not been recognized?

“Very truly yours,

“LEH/kj

“LOYD E. HEWITT”

“EXHIBIT ‘E’

“August 13th, 1937

“Loyd E. Hewitt, Esq.,

“District Attorney,

“Yuba City,

“California.

“Dear Sir:

“Re Garden City Canning Co., Debtor, No.  
27284-L

“In response to your letter of August 10th: The claims mentioned in your letter, to-wit: Addy, Saunders, Bowen, Sutton and Heidotting were received and filed in this office on June 4, 1936. [68]

“I am unable to state why these claimants have not received the payments provided for in the plan of reorganization unless it be that these claims were not brought to the attention



of the parties responsible for the distribution of the funds, since they were filed in this office rather than with the Special Master as directed in the notice.

“Yours very truly,

“WALTER B. MALING,  
Clerk,

“By C. M. TAYLOR,  
“Deputy Clerk.”

(See original thereof on file in the office of the Clerk of this Court.)

The debtor's verified answer to the petition reads:

“Now comes Garden City Canning Company, a corporation, the debtor above named, and, in answer to the petition of John Saunders, W. M. Addy, J. B. Bowen, R. J. Sutton, and J. J. Heidothing, admits, denies and alleges as follows, to-wit:

“I.

“Answering Paragraph I of said petition, the debtor admits that on the 6th day of February, 1936, it filed with the clerk of the above entitled court its petition for reorganization, under section 77-b of the Bankruptcy Act, and that on the 8th day of February, 1936, the above entitled court made and entered its order approving the said petition; that thereafter and on the 3rd day of March, 1936, it filed with the above entitled court its verified sched-

ule of creditors and stockholders and that it set forth in said schedule, as creditors, the names and addresses of the petitioners hereinabove named; that thereafter and on the 12th day of March, 1936, the above entitled [69] court made its order permitting the debtor to remain in permanent possession of its assets, which said order further provided that any and all issues or matters arising in these proceedings of any nature whatsoever be referred to Honorable Burton J. Wyman, as Special Master of the above entitled court, for consideration and report, and which order further provided that all claims of creditors be filed on or before the 15th day of June, 1936; that thereafter the debtor filed with the above entitled court its schedule of assets and liabilities and in its schedule of liabilities listed the names and addresses of the petitioners herein and set forth the true and correct amounts due to said petitioners, and in this connection the debtor denies that the amount set down after the name of John Saunders was less than the amount due him from said debtor and alleges that said schedule correctly discloses the amount due to said John Saunders; the debtor further alleges that thereafter and pursuant to said order of March 12th, 1936, the debtor petitioned said Special Master for an order approving the form of the summary of the order

made and entered by the above entitled court on the 12th day of March, 1936, and an order was made by said Special Master approving the form of the summary of said order; that a copy of the summary of said order was published in the manner provided by said order of March 12th and copies were mailed to each and all of the creditors of said debtor, including the petitioners herein; that said summary of said order as approved by the Special Master recites: 'Said order further provides that in order to participate in the plan of [70] reorganization, creditors must file their claims in the form prescribed by the Acts of Congress relating to bankruptcy on or before the 15th day of June, 1936, said claims to be filed at the office of the Special Master, 1095 Market Street, San Francisco, California'; admits that thereafter and on or about the 20th day of April, 1936, the affidavit of publication of notice to creditors and stockholders was filed with the above entitled court and that thereafter and on the 1st day of May, 1936, the debtor filed with the above entitled court its plan of reorganization, setting forth amongst its creditors, the names of the petitioners herein, with the amounts due said petitioners; denies that the amount set down after the name of John Saunders was less than the amount actually due him but alleges that the amount set down

after the name of John Saunders was the amount actually due to said John Saunders; admits that thereafter and on the 30th day of July, 1936, there was filed with the above entitled court the acceptance of the plan of reorganization by the creditors, and in that connection alleges that none of the petitioners herein filed their acceptance to said plan of reorganization; admits that thereafter and on or about the 4th day of November, 1936, the debtor filed with the above entitled court its petition for confirmation of said plan of reorganization, in which petition the debtor set forth a list of all of its creditors who had filed claims with the Special Master in accordance with the notice theretofore given to creditors, together with the amount due to each of said creditors, and on or about said 4th day of November, 1936, the debtor, pursuant to the approval of said Special Master, mailed written notices to all of the creditors [71] listed in its schedules on file herein, including the petitioners herein, of the hearing of said petition for confirmation of the plan of reorganization and directing said creditors to appear, if they saw fit, at said hearing, and which notices specifically referred creditors to the petition for confirmation of said plan of reorganization, on file in the office of the Special Master, which said petition, as hereinabove alleged,

provided for the payment to the creditors named therein who had filed claims with the Special Master; that thereafter and pursuant to said notice, a meeting of the creditors of the debtor was held before the Special Master on the 16th day of November, 1936; that none of said petitioners were present at said meeting, nor did any of said petitioners enter any objections to said plan of reorganization or to the granting of the petition for the confirmation of said plan; admits that thereafter and on the 2nd day of December, 1936, said Special Master filed with the above entitled court his report recommending the confirmation of said plan, in which report the Special Master recited that the claims duly filed in these proceedings were those claims set forth by the debtor in its petition for confirmation of the plan of reorganization; that thereafter and on the 15th day of December, 1936, and in accordance with the rules of the above entitled court, the petition of the debtor for confirmation of its plan of reorganization and the report of said Special Master came on regularly for hearing before the above entitled court, and an order was made approving said plan of reorganization and confirming the report of the Special Master and adopting the report of the Special Master as the findings of the court; that none of the [72] petitioners herein appeared at said

hearing, nor in any way objected to the entry of the said order of December 15th, 1936, nor did they or any of them appeal therefrom.

“II.

“Answering Paragraph II of said petition, the debtor admits that each of the petitioners filed with the office of the clerk of the above entitled court, proofs of claim in the amounts set forth in said Paragraph II and in that connection, denies that petitioner John Saunders had an allowable claim against said debtor in the sum of \$1,577.70, or in any sum in excess of \$364.40, and the debtor further alleges that none of said claims were filed with the Special Master and that neither the debtor, nor any of its attorneys, had any knowledge of the fact that said claims were filed with the clerk of the above entitled court until the service upon the attorneys for said debtor of the petition of the petitioners herein objecting to the debtor’s petition for a final discharge.

“III.

“Answering Paragraph III of said petition, the debtor admits that according to the notice to creditors referred to in Paragraph I of said petition and in Paragraph I of this answer, the petitioners, as creditors, had to and including the 15th day of June, 1936, within which to file their claims against said debtor, and in

this connection alleges that according to the terms of said notice to creditors, as approved by the court, said creditors were directed to file said claims at the office of the Special Master.

“IV.

“Answering Paragraph IV of said petition, the [73] debtor admits that all of the creditors who filed claims with the Special Master, in accordance with the notice given to creditors, have received the amount due them according to the plan of reorganization as confirmed by the above entitled court, save and except three (3) creditors who have not presented their notes for payment, to whom there is a balance due in the sum of \$30.81, which said sum has been set apart for the benefit of said creditors, and the debtor admits that the petitioners herein have received nothing in payment of said claims and alleges that the reason no payment was made to said petitioners is that said petitioners failed to file their claims with the Special Master as provided in the notice given to all creditors including said petitioners, and in this connection the debtor alleges that none of the creditors who were scheduled by it and who did not file claims with the Special Master have received any payment on account of their claims.

“As a further, separate and distinct defense to said petition, the debtor alleges:

“I.

“That the claim of John Saunders was only allowable in the sum of \$364.40 and, had the claim of John Saunders been filed with the Special Master in the sum of \$1,577.70, the debtor would have been required to file objections to the allowance thereof and a hearing would have been had thereon in accordance with the provisions contained in the order of the above entitled court, dated March 12th, 1936.

“As a further, second, separate and distinct defense to said petition, the debtor alleges: [74]

“I.

“That at the time of the proposing of the plan of reorganization, it was without funds to pay to its creditors, the amount provided for in said plan, and that in order to pay its creditors pursuant to said plan of reorganization, it was necessary for the debtor to borrow sufficient funds; that pursuant to the report of the Special Master, dated December 2nd, 1936, reciting the creditors entitled to participate in said plan of reorganization, which list of creditors did not include the claims of the petitioners herein, the debtor borrowed from the Pacific Can Company on the 19th day of De-



cember, 1936, the sum of \$10,000.00, being the sum which the debtor estimated was necessary to pay the claims of the creditors which had been filed with the Special Master and allowed in the above entitled proceedings and gave to said Pacific Can Company, as security for said indebtedness, a lien on its inventory of canned fruits and vegetables.

“II.

“That subsequent to the entry of the order confirming said plan of reorganization, said debtor has incurred an additional indebtedness to various creditors, including an indebtedness to the Pacific Can Company for cans purchased on open account, on which indebtedness there is still an unpaid balance of \$4,052.02; that in addition to said unsecured indebtedness, the debtor is indebted to said Pacific Can Company on an indebtedness represented by notes secured by a pledge of its entire pack of canned goods in the sum of \$93,395.00, which said indebtedness includes the liability of the debtor for the sum of \$10,000.00, borrowed from said Pacific Can Company to [75] consummate the plan of reorganization as confirmed by the above entitled court.

“III.

“That the debtor has no assets, save and except its inventory of canned goods pledged to

the Pacific Can Company as aforesaid; that the debtor is unable to borrow any money to pay the claims of petitioners; that the debtor has not packed any canned goods since the summer of 1937 and is unable to operate during the year 1938 by reason of its inability to obtain any financing and is, at the present time, engaged solely in liquidating said inventory of canned goods for the benefit of said Pacific Can Company and the debtor is informed, and believes, that upon the liquidation of said inventory of canned goods, it will still be indebted to said Pacific Can Company; that the only persons on the payroll of debtor are one night watchman, one stenographer, and labellers; that G. J. Greco, the president of the debtor corporation, and a large stockholder thereof, who was in active charge of the management of said debtor, is no longer on the payroll of said debtor and is, at the present time, seeking employment.

#### “IV.

“That had the claims of the petitioners herein been filed with the Special Master within the time allowed by the order of the above entitled court, the debtor would have attempted to borrow sufficient funds to pay said claims and, had the debtor been unsuccessful in borrowing said money, it would have filed an amended plan of reorganization whereby all of its cred-

itors would have received a lesser percentage of their claims. [76]

“As a further, third, separate and distinct defense to said petition, the debtor alleges:

“I.

“That by reason of the facts alleged in the creditors’ petition and in this answer, the said creditors are estopped by laches to object to the granting of the debtor’s discharge.

“Wherefore, the debtor prays that the objections of said creditors to its final report and application for a discharge be overruled and that the Special Master herein make his report and findings recommending that the debtor be granted its final discharge as prayed for.

“GARDEN CITY CANNING  
COMPANY

“By G. J. GRECO

“Its President.

“LOUIS ONEAL and

“TORREGANO & STARK

“By ERNEST J. TORREGANO

“Attorneys for Debtor”.

[Verification omitted for sake of brevity.]

(See original thereof which is handed up herewith as a part of this certificate and report.)

Taken in their chronological order, the record herein further shows the following:

On April 30, 1936, pursuant to the orders of March 12, 1936, and March 30, 1936, the following notice to creditors and stockholders was served upon all the stockholders and creditors, among the latter being all the creditors objecting to the discharge of the herein debtor:

“To the Creditors and Stockholders of the Debtor above named: [77]

“You and each of you will please take notice, and you are hereby notified, that on the 12th day of March, 1936, after proceedings duly and regularly had, the above entitled court made and entered an order permitting the debtor above named to remain in possession of its assets until action has been taken upon its reorganization plan, permitting the debtor to administer its assets and conduct its business, subject to the order of the court, and referring all matters in connection with the reorganization of said debtor to Hon. Burton J. Wyman, 1095 Market Street, San Francisco, California, as Special Master of the above entitled court.

“Said order further provides that in order to participate in the plan of reorganization, creditors must file their claims in the form prescribed by the Acts of Congress relating to Bankruptcy, on or before the 15th day of June, 1936, said claims to be filed at the office of the Special Master, 1095 Market Street, San Francisco, California.

“Said order further provides that for the purpose of being heard on any question arising in these proceedings, the interests of any stockholder shall be evidenced by the presentation to the Special Master of the certificate representing the stock held by him, or by the presentation of the certificate of a bank, trust company, broker, or other depository satisfactory to the Special Master, stating that the stock is held for safekeeping, or otherwise, for the person or persons named in the certificate.

“Dated this 10th day of April, 1936.

“LOUIS ONEAL, Esq.

“TORREGANO & STARK

“By ERNEST J. TORREGANO

“Attorneys for Debtor”.

(See originals of said orders and the affidavit of mailing, all of which are on file in the office of the clerk of this court.) [78]

November 4th, 1936, the debtor petitioned for confirmation of the plan of reorganization. Attached to said last mentioned petition and made a part thereof is Exhibit “B” which contains the list of unsecured claims filed in this proceeding, in accordance with the directions in the aforesaid notice, in which list no claim of any of the objecting creditors appears. According to the affidavit of mailing filed herein on the 14th day of November, 1936, the following notice to creditors

of the hearing of the petition for the confirmation of the plan was mailed to each of the creditors, including those herein objecting to the discharge of this debtor:

“To the creditors and stockholders of Garden City Canning Company:

“Please take notice that the debtor above named has filed herein a petition for confirmation of the plan of reorganization heretofore filed herein, which said plan has been accepted by creditors holding more than two-thirds in amount of all of the claims filed herein, and that Honorable Burton J. Wyman, Referee in Bankruptcy, as Special Master of the above entitled court, to whom these proceedings have been referred, has called a meeting of creditors of said debtor to be held at his office, Room 609 Grant Building, 1095 Market Street, San Francisco, California, on the 16th day of November, 1936, at the hour of 2 o'clock P. M. of said day, at which time evidence will be introduced by the debtor in support of said petition for confirmation of plan of reorganization, and at which time you may appear if you see fit and produce any evidence or argument in opposition to the confirmation of said plan.

“For further particulars you are hereby referred to the petition for confirmation of said reorganization plan [79] on file in the office of the said Special Master.

“Dated November 4th, 1936.

“LOUIS ONEAL and

“TORREGANO & STARK

“By ERNEST J. TORREGANO

“Attorneys for Debtor.”

(See original of said last mentioned petition, said last mentioned notice, and said last mentioned affidavit, all on file in the office of the clerk of this court.)

When said petition for the confirmation of the plan of reorganization came on for hearing before me on the 16th day of November, 1936, at the hour and place fixed therefor in said last mentioned notice, NO CREDITOR OF THE DEBTOR, as shown by my certificate and report filed herein on the 22nd day of December, 1936, and now on file in the office of the clerk, of this court, APPEARED AT SAID HEARING.

(At no time prior to, or at said last mentioned hearing, or at any time prior to the signing and the entry of the order approving the plan of reorganization, on the 15th day of December, 1936, was it called to my attention that the aforesaid claims of the creditors now objecting to the debtor's discharge were missing from the list of unsecured creditors who had filed claims herein, nor was it called to my attention during any of the last referred to times, that any of the claimants now objecting to the discharge of the herein debtor,

in spite of the specific direction of the aforesaid notice to file claims with me as special master, had been ignored and that said claims instead had been filed with the clerk of the court, and not in accordance with said last mentioned notice.)

When the hearing on the petition of the objecting creditors was held before me, I was attended upon by August B. Rothschild, Esq., appearing on behalf of Messrs. Torregano & Stark, attorneys for the debtor, and Loyd E. Hewitt, Esq., the attorney for the objecting creditors. The following proceedings then took place: [80]

“The Master: Will you give the appearances, gentlemen?”

“Mr. Hewitt: My name is Loyd E. Hewitt. I am appearing for the petitioners in this action: John Saunders, W. M. Addy, J. B. Bowen, R. J. Sutton, and J. J. Heidothing.

“This matter, as Your Honor knows, has been referred to you on an order referring creditors’ objection to report and final discharge of debtor to Burton J. Wyman, Special Master. The petition of the creditors objecting to the report and final discharge is on file and I ask for the introduction of all files and papers in the matter of the proceeding of the reorganization of the corporation in the matter of Garden City Canning Company, No. 27284-L.

“The Master: They are part of the records and will be considered.



“Mr. Rothschild: They are not in evidence, but considered part of the record?”

“The Master: They are part of the record. They will be considered. There is no necessity to offer them into evidence because they are before the Court.

“Mr. Hewitt: The reason I made that offer is I am not familiar with the usual order.

“The Master: I hold that anything in the records of the Court is part of the record and can be considered by the Court, even though it is not in the same case, so long as they are related cases.

“Mr. Hewitt: Now, in this petition John Saunders, W. M. Addy, J. B. Bowen, R. J. Sutton, and J. J. Heidothing are objecting to the report and ask that it be not accepted or approved and the debtor be not discharged; that the above entitled Court make its order that before said debtor is finally discharged that it be caused to pay said petitioners, [81] and each of them, the amount due said petitioners according to their proven claim on the same percentage basis on which the other unsecured creditors of said debtor were paid, and for such other and further relief as to this Court may seem meet and equitable in the premises.

“Now insofar as the claims of petitioners except that of John Sutton, there is no question as to the amount. The only amount there is any

question about is the John Sutton claim and the claim there is that it is three hundred and some odd dollars. I think we claim something like \$1400 or \$1500. due.

“Mr. Rothschild: Correct.

“Mr. Hewitt: And Mr. Rothschild agreed with me and stipulated with me that it would not be necessary to bring Mr. Sutton in at this time until the matter was threshed out as to the standing of petitioners insofar as their claims were concerned. Now, insofar as the petition itself is concerned, has Your Honor read it?

“The Master: Yes.

“Mr. Hewitt: It shows that on or about the fourth day of June, I believe it is, 1936, the petitioners, all the petitioners filed their claims for the amounts as set forth in Paragraph 2 of the petition, which is found on page 3 thereof. These claims were filed with the Clerk of the United States District Court, in which this matter was then pending. The records will show the claims were filed on that date and for the amounts set after the different names of the different creditors or petitioners. Now, the creditors have received nothing. The answer to the petition admits all of the allegations of the petition except that it denies the amount which John Sutton sets out and claims there was due and owing him a lesser amount, [82] I believe in the sum of three hundred and some odd dol-

lars. As I said before, the claims are on file; I suppose it is only a question of law and a matter of argument insofar as we are concerned in this matter at this time.

“Mr. Rothschild: There is a little evidence I want to put in at this time.

“Mr. Hewitt: I see. Now, as long as these claims are considered as evidence, I think that is all that is necessary to present at this time until the evidence is put in by Mr. Rothschild, if that is agreeable to the Court.

“The Master: Very well.

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“A. B. ROTHSCHILD,

“called for the debtor, sworn.

“The Witness: I am associated with the firm of Torregano & Stark, attorneys of record for the debtor in this proceeding. I was in charge, for that firm, of handling this particular proceeding. The first time that I learned that the claims of the petitioners were filed with the Clerk of the United States District Court was on being served with the petition of the petitioners objecting to the final discharge; I know of my own knowledge that no other member of our firm or of the firm of Louis Oneal, associated with us as attorney for the debtor, had any knowledge that the claims were on file. Cross examine?

(Testimony of A. B. Rothschild.)

“Cross Examination

“Mr. Hewitt: Q. Do you know whether or not any of the employees of the Garden City Canning Company knew the claims were on file and discussed those matters?

“A. Not to the best of my knowledge and Mr. Greco is here to testify. [83]

“Q. I speak particularly of Marie Hauck, a peach buyer and agent for the company. Do you know whether or not she discussed the matters either with Mr. Oneal, yourself, or any officers of the company?

“A. Whether they were discussed with any officers of the company, I do not know, nor can I speak for Mr. Oneal’s office. I do know I never met Marie Hauck; to the best of my knowledge she never has been in our office. I think I would know if she had been in the office.

“Mr. Hewitt: That is all.

(Witness excused.)

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“G. J. GRECO,

“Called for the Debtor. Sworn.

“The Master: Q. What is your full name?

“A. G. J. Greco.

“Mr. Rothschild: Q. Mr. Greco, when did you first learn that the claims of the petition-

(Testimony of G. J. Greco.)

ers in this proceeding were filed with the Clerk of the District Court?

“A. Well, it was right after I filed for the discharge. You sent me a wire telling me about finding these other claims.

“Q. Did you have any conversation with Marie Hauck with reference to the claims of these parties?

“A. No, I did not.

“Q. Do you know whether any other member of the organization did?      A. No.

“Q. At the time you proposed the plan of reorganization in this proceeding, did you have the cash to make the payments provided for by the plan?      A. No, we did not.

“Q. And where did you obtain that amount?

“A. We borrowed \$10,000 from the Pacific Can Company.

“Q. Do you recall whether you effected the reorganization promptly upon the plan's being accepted by the creditors? [84]

“A. I believe it was promptly.

“Q. Well, wasn't there a delay of a few months?

“A. I take it back. I don't think we started paying the creditors until sometime in December and the proceedings were in the summer, June or July.

“Q. How did you arrive at that sum of \$10,000 that you borrowed?

(Testimony of G. J. Greco.)

“A. Well, that represented approximately 50 per cent of the amount owed of those that filed.

“Q. Now, to refresh your recollection, the order confirming the reorganization was made in December of 1936. Has the debtor corporation, the Garden City Canning Company, incurred any indebtedness since that time?

“A. Yes, we have.

“Q. To whom?           A. To whom?

“Q. Yes?

“A. Well, there are several tomato growers and supply houses.

“Q. Does the Garden City Canning Company owe money at this time?

“A. Yes, we do.

“Q. To whom do you owe money?

“A. To these particular tomato growers and supply houses and there is one big one in there for the rental on pear equipment.

“Q. Has the indebtedness to the Pacific Canning Company ever been paid back?

“A. You refer to this \$10,000?

“Q. To this \$10,000?

“A. Well you see, that \$10,000, they took a lien on the inventory and that has been paid back as we shipped, along with the original amount borrowed on the inventory on warehoused goods.

(Testimony of G. J. Greco.)

“Q. Are you still indebted to the Pacific Canning Company?

“A. Yes, we are.

“Q. For approximately how much?

“A. Approximately \$25,000. [85]

“Q. Is that all secured?

“A. All secured.

“Q. By what?

“A. Warehouse receipts on the inventory.

“Q. Is there any free inventory?

“A. No, none.

“Q. When was the last time the cannery was in operation?

“A. The summer of 1937.

“Q. Why have you not operated since then?

“A. Well, this year we were unable to effect any financing so we had to close it up.

“Q. Is there any business being done there at this time?

“A. Just selling the canned goods.

“Q. And do you think the canned goods have sufficient value to liquidate the indebtedness to the Pacific Canning Company?

“A. That all depends on the market. The way the market is now, they may just about break even, but I doubt it.

“Q. Do I understand there has been a rise in the market since March of this year?

“A. A rise?

(Testimony of G. J. Greco.)

“Q. Yes? A. It is going down.

“Q. Who is on the payroll of the Garden City Canning Company?

“A. The only one on the payroll is a girl who acts as bookkeeper and plant agent, and we are only paying her now \$50 a month.

“Q. Who handles the sales?

“A. Well, I handle the sales through brokers in the city.

“Q. Are you on the payroll?

“A. No, I am not.

“Q. When is the last time you were on the payroll?

“A. The last time I was on the payroll was last January or February.

“Q. At the present time you are unemployed? A. Right.

“Q. Would it be possible at this time to obtain funds to pay the claims of the petitioners? A. Well I would say definitely no.

[86]

“Q. There are no present plans to reopen the cannery?

“A. No, there are not.

“Mr. Rothschild: Cross examine.

“Cross Examination

“Mr. Hewitt: Q. Mr. Greco, you were present when this matter was first heard in the United States District Court?



(Testimony of G. J. Greco.)

“A. Yes.

“Q. At that time Mr. Torregano appeared for you, did he not?

“A. Yes, sir.

“Q. At that time Mr. Torregano stipulated that—you saw me there then, did you not?

“A. Well, I believe I saw you there.

“Q. Mr. Whitmore and myself?

“A. Well, I would not swear to it. I saw a couple of gentlemen there; I imagine you were one of them.

“Q. And there was an objection made to Mr. Torregano and finally a stipulation made upon which an order of Court was based, that during the time this matter was being decided upon, whether or not the reorganization was going to be allowed, that the Greco Canning Company, of which your father was president, was not to receive any money under the order which it had for payment, and that the only moneys to be spent was for your own salary and those necessary to carry on the business of selling the canned goods, do the shipping, and take care of the business. Is that correct?

“A. Well, I would not say it is correct as to every detail, but I remember something to that effect.

“Q. And at that time you knew that Mr. Whitmore was appearing for Mr. Winship and

(Testimony of G. J. Greco.)

one or two others and I was appearing for these petitioners, did you not?      A. Yes.

“Q. Did you ever go to the Clerk’s office to see whether or not any claims were filed by these people against you? [87]

“A. Did I ever go?

“Q. Yes?      A. No, I did not.

“Q. Did you ever write or instruct any one to write to these claimants concerning their claims?      A. No.

“Q. Now, in your petition you set forth the names of these petitioners and state that they were creditors of the company; that the amounts of money claimed in their petition, except that of John Sutton, and as to that amount it was a reduction down to some three hundred odd dollars——      A. Yes.

“Q. And at that time of November 4th, rather November 16th, the time the reorganization was set for hearing before His Honor here, your petition then and plan of reorganization included the claims and the amounts that you thought at that time were due these different petitioners, which are the same amounts as we claim, except as to John Sutton?

“A. Other than those that were shown in here?

“Q. Yes, on the 16th of November, 1936?

“A. Well, as far as I remember, the claims

(Testimony of G. J. Greco.)

that were presented in this Court did not include those claims you are referring to.

“Q. In the plan of reorganization that was filed and was heard, I believe, on the 16th of November, 1936, wasn't it, Mr. Rothschild?

“Mr. Rothschild: It is stipulated it was heard.

“Mr. Hewitt: Q. There were named in that plan unsecured creditors and you set forth William Addy, J. B. Bowen, and J. J. Heidothing, R. J. Sutton, John Saunders, and other petitioners, did you not?

“A. I think in the original plan of reorganization they were included.

“Q. And in the plan of reorganization which was acceptable at that time, you intended to pay these creditors, did you not?

“A. At the original time, yes.

“Q. On the 16th of November, 1936? [88]

“Mr. Rothschild: I object to that as calling for the opinion of the witness as to the law applicable to the proceeding.

“Mr. Hewitt: His intention, Your Honor.

“(Question read.)

“Mr. Rothschild: The time referred to is the first of November.

“The Master: The plan of reorganization will speak for itself. Does it show anything about the claims?

(Testimony of G. J. Greco.)

“Mr. Hewitt: It shows these claims were in there, yes.

“The Master: That they had filed?

“Mr. Hewitt: The plan of reorganization shows those remaining unsecured claims against the debtor are, and sets them forth, with their names, Addy, Bowen, Sutton, et cetera.

“Mr. Rothschild: Mr. Hewitt, may I make this suggestion? Possibly it will be stipulated I can testify from here.

“Mr. Hewitt: It is perfectly all right.

“The Master: Wait a minute. Where are we on this question?

“Mr. Rothschild: Will you hold the ruling on the question because I think I may clear some facts in Mr. Hewitt’s mind.

“The Master: Very well.

“Mr. Rothschild: On or about April 30, 1936, we mailed to all of the creditors listed in the bankruptcy schedules, with some few exceptions which did not include your clients, the mimeographed form of the plan of reorganization, which I have in my hand, together with a form of proof of debt. I call particular attention to the fact that the mimeographed form as I have it here has a form of consent attached to it as to the plan of reorganization. They were sent, as I recall, duplicates to each creditor. Those who accepted sent back the [89] copy, the form

(Testimony of G. J. Greco.)

of consent to that, which we filed with this Court. So the document you are referring to is the same document that was presented to the creditors at the end of April and filed with this Court, as I recall, in June.

“Mr. Hewitt: The same document on which this Court made its order on the 16th of November, 1936, isn't it?”

“Mr. Rothschild: That is correct.

“Mr. Hewitt: And had in there that the unsecured claims set forth unsecured claims against the debtor are as follows, and it names the petitioners herein.

“Mr. Rothschild: That is correct. I suggest that these two documents to which I referred in the testimony be introduced in evidence.

“The Master: Very well. Now then the question that was asked, isn't it covered by the plan of reorganization?”

“Mr. Rothschild: The papers on file speak for themselves, the plan and the order of Court and the Master's report.

“The Master: The objection will be sustained. This will be Debtor's Exhibit No. 1, of October 7, 1938.

“Mr. Hewitt: Q. When you borrowed the \$10,000, from the Pacific Canning Company, you say?”

“The Witness: A. Yes, sir.

(Testimony of G. J. Greco.)

“Q. When you borrowed the \$10,000 from the Pacific Canning Company, that was to pay the unsecured claims mentioned in your plan of reorganization, was it not?

“A. That was to pay unsecured claims of those that had filed, that we had known about that filed in this Court.

“Q. The amount that you arrived at was on the basis of the unsecured claims that you had mentioned at the time of the reorganization, was it not?

“A. No. No, the amount borrowed was based on the number, on the amount of unsecured claims that were filed with this Court.

[90]

“Q. You never at any time had any knowledge of any claims being filed with the Clerk of the United States District Court?

“A. I certainly did not.

“Q. For the Northern Division of California? A. No, sir.

“Q. The Northern District of California. That is all.

“Redirect Examination

“Mr. Rothschild: Q. During the pendency of this proceeding you frequently were in touch with Mr. Oneal’s office? A. Yes.

“Q. Where you gave information to them and they in turn advised you? A. Yes.

(Testimony of G. J. Greco.)

“Q. Did they ever show you a list of claims on file in this proceeding?

“A. Did they ever show me?

“Q. Yes?

“A. Yes, I have a list of names of those on file.

“Recross Examination

“Mr. Hewitt: Q. Does that list include the names of these petitioners?

“A. No, it did not.

“Q. They were given you by Mr. Oneal or members of his office?

“A. I believe they were.

“Q. Did they state those were all the claims filed in this proceeding?

“A. Those were absolutely the names of the petitioners that filed in this Court.

“Q. The names of the petitioners who filed in this Court? A. Yes.

“Q. These names were not there?

“A. No, they were not.

“Q. But the list—

“A. That is what I am talking about, the list.

“Q. I guess we misunderstood each other. Pardon me. The list given you by Mr. Oneal's office was given you with the [91] understanding that was a list of all creditors who had filed claims in this proceeding at that time?

(Testimony of G. J. Greco.)

“A. Yes.

“Q. That was given you after June 14, 1936, was it?

“A. Well, it must have been after June 14, 1936.

“Mr. Hewitt: I think that is all.

(Witness excused.)

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“Mr. Hewitt: I will ask you a question, Mr. Rothschild: Mr. Rothschild, did you ever go to the Clerk’s Office to see whether or not any claims were filed with the Clerk of this Court?

“Mr. Rothschild: Not until after I received your petition.

“Mr. Hewitt: Q. Did any member of Torregano & Stark’s office examine the files to see whether any claims were filed with the Clerk of the United States District Court?

“A. No.

“Q. In this proceeding.

“Mr. Hewitt: That is all.

“Mr. Rothschild: Your Honor, as I see it, I don’t think there is any real dispute as to the facts here. I think Mr. Hewitt will concede that none of the parties knew about the claims being on file until after their objections to the final discharge. The sole question, as I see it, is whether we should have known whether they were on file.



“Mr. Hewitt: If the Court please, may I at this time, merely for the purpose of the record, introduce a letter dated June 3, 1936, which will substantiate Exhibit A of the affidavit which went on file?

“Mr. Rothschild: I might suggest, Mr. Hewitt, I will stipulate that the exhibits to your affidavit are true exhibits, if the parties were here they would identify their letters as set forth.

“Mr. Hewitt: Thank you very much, Mr. Rothschild. [92]

“Mr. Rothschild: As I say, there is no dispute on the facts. The facts are these: We relied on the amount of claims on file; the money was borrowed accordingly and claimants were paid accordingly. Also, it is a fact there is no money at the present time. The plant is indebted to the Pacific Canning Company.

“Mr. Hewitt: Will you pardon me just one moment?

“Mr. Rothschild: Yes.

“Mr. Hewitt: Will you stipulate that the affidavit by me may be introduced in evidence and may be my testimony?

“Mr. Rothschild: Yes. I don't recall what it says.

“Mr. Hewitt: An affidavit supporting the petition.

“The Master: We will consider the whole record.

“Mr. Rothschild: Well, consider all affidavits as testimony.

“I don’t know how familiar Your Honor is with the answer. My argument is merely a reading of it.

“The Master: I have checked through here and I don’t see it. You filed it in the District Court, did you?

“Mr. Rothschild: I presume so.

“The Master: Maybe I have overlooked it here.

“Mr. Rothschild: Filed in March of 1938. It should be just before the order of reference.

“Mr. Hewitt: One of the last things filed.

“The Master: No, the order of reference was filed on February 14, 1938.

“Mr. Rothschild: The answer was filed with you, Your Honor. The order of reference provided that the answer be filed that way. I can briefly summarize it. That is my argument. The facts set forth there are, that the debtor after instituting the proceeding filed its schedules, wherein [93] the names of the particular creditors were set forth; that the District Judge made an order continuing the debtor in possession and referring the proceeding to Your Honor as Special Master, and provided for the filing of claims; that the debtor then prepared a form of notice to creditors, advising them as to claims to be filed at this office pursuant

to a petition of the debtor. Your Honor approved the form of notice to the creditors with reference to the filing of claims; according to affidavit filed here, notice was sent to all creditors scheduled. At that time the creditors were circularized with plan of reorganization.

“That no acceptances were filed by the particular creditors; that on or about the 4th of November, 1936, the debtor filed its petition for confirmation of the plan of reorganization and set forth and listed all of the creditors whose claims had been filed with the Special Master in accordance with the notice theretofore given creditors, together with the amounts due, and on or about said 4th day of November, 1936, the debtor, pursuant to the approval of said Special Master, mailed written notices to all of the creditors listed in its schedules, including the petitioners, of the hearing on the petition for the confirmation of the plan and directing the creditors to appear if they saw fit, at the hearing, and which notice specifically referred the creditors to the petition for the confirmation of the plan of reorganization on *filed* in the office of the Special Master, which said petition provided for the payment to the creditors named therein who had filed claims with the Special Master; that thereafter and pursuant to said notice, a meeting of the creditors of the debtor was held before the Special Master on the 16th day of November, [94]

1936; that none of said petitioners were present at said meeting, nor did any of said petitioners enter any objections to said plan of reorganization or to the granting of the petition for the confirmation of said plan; admits that thereafter and on the 2nd day of December, 1936, said Special Master filed with the above entitled Court his report recommending the confirmation of said plan, in which report the Special Master recited that the claims duly filed in these proceedings were those claims set forth by the debtor in its petition for confirmation of the plan of reorganization; that thereafter and on the 15th day of December, 1936, and in accordance with the rules of the above entitled Court, the petition of the debtor for confirmation of its plan of reorganization and the report of said Special Master came on regularly for hearing before the above entitled Court, and an order was made approving said plan of reorganization and confirming the report of the Special Master and adopting the report of the Special Master as the findings of the Court; that none of the petitioners herein appeared at said hearing nor in any way objected to the entry of the said order of December 15th, 1936, nor did they or any of them appeal therefrom.

“The remaining allegations of our answer are concerned with the claim of Sutton. It will be necessary to hear the objections to that claim. If it is to be allowed, there is a jurisdic-

tional matter. That there was no knowledge on any one's part that these claims had been filed.

“There is a special defense setting up the present financial condition of the debtor corporation, that money was borrowed to pay the claims of creditors on file and other arrangements would have had to be made had the debtor known of these particular claims. Our personal position on the matter is that it is very unfortunate. I don't know of any case where similar claims have [95] been filed with the District Court. Prior to this I have never examined the files of the Clerk's Office to determine whether any claims were filed there where the notice specifies they should be filed with this Court. It is a peculiar matter. Unless we were duty bound to examine those records, it is just an unfortunate situation where with this lapse of time and the present condition of the company, nothing can be done about it. That is the practical point. Then the legal situation is: The final order was made by the District Court in December of 1936, confirming Your Honor's report as Special Master, and Your Honor's report specifically provided for payment to the creditors referred to in Your Honor's report, being creditors whose claims had been filed with you. That, as I say, became the order of the District Court and, in my opinion, was an appealable order at that time because

due notice was given of all these proceedings to the creditors in question.

“Mr. Hewitt: If the Court please, insofar as filing the claims with the Clerk of the United States District Court under Section 77B of the Bankruptcy Act, it is my understanding, when I take the provisions of that Bankruptcy Act and all the General Orders and apply them in this particular instance as to claims, in the United States Code annotated, 511, Chapter VI, Section 93, Subdivision (c):

“ ‘Claims after being proved may, for the purpose of allowance, be filed by the claimants in the Court where the proceedings are pending or before the Referee, if the case has been referred’.

“Subdivision (d) reads:

“ ‘Claims which have been duly proved shall be allowed upon receipt by or upon presentation to the Court, unless objection to their allowance shall be made by parties in interest, or [96] their consideration be continued for cause by the Court upon its own motion.’.

“General Order XX:

“ ‘Proofs of claims and other papers filed subsequently to the reference, except such as call for action by the Judge, may be filed either with the Referee or with the Clerk.’.

“As to Subdivision (c) of Section 93, in the case of *P. Derby & Co.*, decided, I believe, in

1937, found in 18 Fed. Sup. at page 995, it was held:

“‘It is not necessary that proof of claim against a bankrupt shall have been filed with the Referee, it being sufficient if the claim is filed with the trustee or the Clerk of the Bankruptcy Court.’

“The Master: Of course, those are all straight bankruptcy proceedings.

“Mr. Hewitt: That is true, Your Honor, but as I understand Section 77B, under which the reorganization of this corporation was undertaken, it is a matter in which the Bankruptcy Statute and General Orders apply, whether it is on reorganization or what not.

“The Master: Well, not necessarily. They may and they may not. They have held, for instance, with reference to filing of claims under Section 74, that the general law of bankruptcy does not apply at all.

“Mr. Hewitt: I don't know of any proceeding where it has been held under Section 77B that the general law, that as long as you have them in Court, they are perfectly all right.

“The Master: The order made a special finding after that.

“Mr. Hewitt: But in this particular case, which was found in 18 Fed. Sup. at page 995, the corporation first filed for reorganization under Section 77B; the claims under Section 77B were filed with the trustee as provided for

in General Order XX, [97] since they were filed with the Referee or the Clerk of the Referee. The petition for reorganization was not allowed and the corporation then filed directly in bankruptcy and asked to be adjudicated a bankrupt. The matters were before the Court and were records of the Court and this employee of the trustee, who was appointed in the bankruptcy matter, knew of these claims. The trustee never knew of it and a considerable period of time elapsed, in fact a year had passed, as I remember it on reading the case, and it was held there that inasmuch as the matters had been filed with the Court, regardless of whether they were filed prior to the petition of bankruptcy, under the General Bankruptcy Order, even though filed under Section 77B, that still applied and they were still claims filed in the Court and could be and should be allowed insofar as the debtor was concerned.

“Also, in the case of *In Re Brill*, found in 52 Fed. (2d) 636, it was held that proof of claim against a bankrupt estate may be filed either in the office of the Clerk of the Bankruptcy Court or with the Referee. Of course, Your Honor, that merely goes to substantiate the case I just mentioned and it is a straight bankruptcy. I have been unable to find where the rules do not apply insofar as Section 77B is concerned.



“Then in the case of J. B. Orcutt Company, 204 U. S., page 96, it was stated :

“ ‘The presentation and filing having been made within the time and with one of the proper officers’, that was speaking of filing with the trustee in that particular instance, ‘and his failure to deliver it to the Referee cannot be held to be failure on the part of the creditor to properly file his proof’. And in that particular case the claims of the Scott Company were allowed and I believe some year after having been filed [98] with the trustee, the trustee gave them to his attorney and asked his attorney to file them with the Referee. The attorney took them to his office and asked one of the employees in his office to file them with the Referee and immediately forgot them. There was nothing done and some two years later one of the claims could not be found. This one was found in some other file. The claim was allowed and held entitled to be paid.

“We take the position that we have come into this Court, filed our claim within the time prescribed by law, we got the records into the Court itself, whether it be with the Special Master or not. The record was with the Clerk of the Court. Under the Bankruptcy Act, the debtor in this case, through its attorneys or other employees, was put on constructive notice that claims were filed, could be filed with the Clerk of the United States District Court. That

having been done, it was their duty to examine the files of the Clerk to see whether or not there had been any claims filed therein. Had they done so, they would have found the claims of these petitioners and, finding the claims of these petitioners, the petitioners would have been paid as were other creditors of the company whose claims were filed with the Special Master.

“Now, in addition to that, we had no way of knowing that these claims had not been found. True, we received notice that this matter or that matter was to come up. These men were farmers. They cannot afford to pay counsel to travel back and forth and examine papers which may be filed with the District Court. They relied upon the fact that they had filed claims and received no objections to the claims nor had they received any notice that the claims had been rejected and, having properly filed these claims with the Court, they took the position, this being a court of equity, they would receive the same amount of money as any other creditor, in proportion [99] to any other creditor, and we feel we are entitled under these cases and under General Order XX to have it determined that we were here and that we filed within the time and at the proper place.

“Now, if there is any question in Your Honor’s mind as to whether or not these Orders and the General Bankruptcy Statute applies to Sec-

tion 77B, if Your Honor desires I will again try to make a search and allow other counsel more familiar with federal practice than I am to make the search and see whether or not we can find anything on it, in order to aid Your Honor in making your decision.

“Mr. Rothschild: If Your Honor please, had the debtor known about the filing of the claims, they would have been paid. Had the debtor known about the filing of these claims, it is very likely he would have been compelled to file an amended plan of reorganization. In the period that elapsed between the time the plan was filed and the time the plan was confirmed, in that same time he was raising the money. But that is neither here nor there. So far as the applicability of the General Orders to proceedings under Section 77B, let me read this one statement from Collier, at page 1539, 4th Edition, referring to filing claims in Section 77B proceedings:

“‘The Judge is required to prescribe the manner and time within which claims are to be filed, evidenced, and allowed. The ordinary provisions of the Bankruptcy Act are not applicable in determining when a creditor must file his claim. Subdivision (c) (6) gives the 77B Court the power to determine when claims must be filed. A creditor who fails to file during the required period will be barred unless

there is a provision in the plan providing for such late claimants'. [100]

“Mr. Hewitt: That says the time, doesn't it?

“Mr. Rothschild; No, the first is, 'time and manner'. Now the manner having been prescribed, particularly by the order approved by the Court that I first mentioned, all these proceedings having become final, in other words, the claims as filed pursuant to the notice are reported to the Court. The order made by this Master referred to the claims set forth in our petition.

“The Master: Certificate, rather than order.

“Mr. Rothschild: I think it was called an order. I guess it was a certificate. Then the petition for the confirmation again referring to that and the order of the District Court again referring to it. We have the situation where we start in with this first notice approved by the Court, cumulative, going up for each order and the creditors having notice of all orders, each order referring back to this original order.

“So far as the duty to check the Clerk's Office is concerned, it might not be so difficult here, but if that rule is applied here the same rule would apply to 77B proceedings referred to the Referee in Eureka as Special Master, or any place in the state. Is the attorney handling the case in Eureka in duty bound to go to Sacramento to check? So far as the rule in bankruptcy is concerned, claims may be filed

either place; the section so states. And there the clerks are required to deliver claims filed with them in ordinary bankruptcy proceedings to the Referee, and that is necessary because under General Order XXIV the Referee shall maintain open to inspection a list of claims proved against an estate, so if it were definitely a bankruptcy, definitely we would have a right to rely on the Referee's records over some other officers of the government. I don't think it applied in this case. [101] There is no statutory duty, in my opinion, under Section 77B, but if there were such a duty, I don't think the debtor should be penalized by the Clerk's failing to perform his duty. If it were a regular bankruptcy proceeding, the debtor would have a right to rely on General Order XXIV, stating that the Referee shall keep records. The Referee has a right to rely on General Order LI, stating that the Clerk will forward claims to him. Even if the general rule applied, we would have a situation whereby the debtor could not be penalized.

“The Master: I will give you ten days, counsel, to submit any further authorities and you may take five days thereafter to answer, Mr. Rothschild.

“(Submitted 10 and 5).”

(See Reporter's Transcript handed up herewith as a part of this Certificate and Report.)

DISCUSSION BY AND OPINION OF  
SPECIAL MASTER

This is a perfect example of a case wherein unfortunate results, i.e., the loss of pro rata payments of claims of certain creditors, are brought about because of the failure of such creditors, or their representative, or representatives, to follow the specific direction of the notice to creditors to file their claims with the special master instead of with the court. In an attempted justification of the filing of said claims directly with the court instead of with the special master, in spite of the unambiguous language of the notice with regard to the time and place of filing, counsel for said creditors cites three cases, *In re P. Derby Co.*, 18 F. Supp. 995, *In re Brill*, 52 F. (2d) 636, and *J. B. Orcutt Co., v. Green*, 204 U. S. 96, 27 S. Ct. 195, 51 L. Ed. 390. Counsel for said creditors also calls attention to General Order XX. A reading of the decisions relied upon to excuse said creditors from their negligence in this regard, clearly shows that said decisions [102] deal with regular bankruptcy proceedings and not with situations arising in proceedings under section 77B of the Bankruptcy Act, as does the proceeding here under discussion.

In ordinary proceedings in bankruptcy whether the claims of creditors be filed in the courts where the proceedings are pending, or before the referees in charge of said proceedings, such filings are

equally effective, *but only so because provision is made for such alternative filings both in the act proper and in General Orders.\** Section 57(c) of the Bankruptcy Act provides, "Claims after being proved may, for the purpose of allowance, be filed by the claimants in the court where the proceedings are pending or before the referee if the case has been referred." General Order XX states, "Proofs of claims and other papers filed subsequently to the reference, except such as call for action by the judge, may be filed either with the referee or with the clerk." Neither of these rules can give any comfort to the creditors who failed to comply with the notice giving directions when and where claims of creditors should be filed, for the reason that the herein proceeding is not a regular proceeding in bankruptcy, but one strictly under the peculiar provisions of Section 77B of the Bankruptcy Act and being one in which a referee was not, and legally could not, be appointed, at any stage of these proceedings to date. These rules therefore have no operative force herein, particularly in the light of certain provisions of Section 77B. In this connection, see subdivision (c) (6) which, in part reads, "Upon approving the petition or answer or at any time thereafter, the judge, in addition to the jurisdiction and powers elsewhere in this section conferred upon him, \* \* \* shall determine a reason-

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\*Italics in this Opinion are Special Master's.

able time within which the claims and interests of creditors and stockholders may be filed or evidenced and \* \* \* *the manner in which such claims and interests may be filed or evidenced and allowed,* \* \* \*” Also, note the reading of subdivision (k), the portion pertinent to a consideration of the matter [103] now before the court being as follows, “If an order is entered directing the trustee or trustees to liquidate the estate pursuant to the provisions of clause (8) of subdivision (c) of this section: (1) The case may be referred to a referee \* \* \* (4) claims which are provable under section 63 may be proved as provided in section 57 \* \* \* *None of the sections enumerated in this subdivision (k), except subdivisions (g), (i), (j), and (m) of section 57, \* \* \* shall apply to proceedings instituted under this section 77B unless and until an order has been entered directing the trustee or trustees to liquidate the estate.*”

See, also, *Foust v. Munson S. S. Lines*, 299 U. S. 77, 82, 57 S. Ct., 90, 93, 81 L. Ed. 49, 53.

Inasmuch as no order of liquidation has been entered herein, and inasmuch as under the situation here presented, the provisions of subdivision (c) of section 57 of the Bankruptcy Act are expressly eliminated by the language above quoted from section 77B, subdivision (k) (4), of said Act, it conclusively follows that counsel's argument with reference to the applicability of General Order XX, promulgated long before section 77B was enacted, which General Order is almost identical with said



subdivision (c) of section 57 of the Act, must fall.

While it is to be regretted that these claimants have been deprived of their pro rata payments, there seems to be no remedy under the facts, circumstances and law with which the court has to deal herein, the chief reason being that there is no fund on hand with which to pay these claimants, assuming these claims all to be correct in form and substance. Secondly, the court is brought face to face with a clear case of laches on the part of these claimants, whose negligence began when they disregarded the express wording of the notice which told them when and where their claims should be filed, and whose negligence continued when they failed to be present, or represented, at the hearing held on November 16, 1936, i. e., the hearing on the petition [104] for confirmation of the plan of reorganization, at which time said creditors would have learned of their failure to file their claims as said notice directed, and I, as special master, later could have so prepared my certificate and report on said petition for confirmation as to protect the rights of said negligent creditors.

Under the evidence herein, the debtor being without any funds over which the court could exercise jurisdiction, there would be but two ways in which the court could make provision for the pro rata payment of these negligent creditors, (1) compel the debtor, which heretofore has acted strictly in accordance with the orders of this court, itself di-

rectly to raise the money with which to make said payments, or (2) compel said debtor to proceed against those creditors of the same class as the negligent creditors to repay into debtor's estate, sufficient money to take care of these unpaid pro rata payments in each instance. Legally and equitably either of these methods would be violative of the doctrine of laches, of which it was said by the Supreme Court of the United States in *Gallihier v. Cadwell*, 145 U. S., 368, 373, 12 S. Ct. 873, 875, 36 L. Ed. 738, 740, “\* \* \* laches is not like limitation, a mere matter of time; but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relations of property or the parties.” See, also, *Pickens v. Merriam* (C.C.A. 9) 242 F. 363, 371, to the same effect. “A suitor in equity”, declared the court in *Speidell v. Henrici*, 15 F. 753, 756, “is required to be ‘prompt, eager, and ready’ in the pursuit of his rights. Diligence is an essential condition of equitable relief, and unexplained negligence is never encouraged.” In the language of the Supreme Court of the United States in affirming the decree dismissing the bill in equity in the last cited case, *Speidel v. Henrici*, 120 U. S. 377, 387, 7 S. Ct. 610, 612, 30 L. Ed. 718, 720, declared, “Independently of any statute of limitations, courts of equity uniformly decline to assist a person who has slept upon his rights, and shows no excuse for [105] his laches in asserting them. ‘A court of

equity,' said Lord Camden, 'has always refused its aid to stale demands, where the party slept upon his rights, and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence; where these are wanting, the court is passive, and does nothing. Laches and neglect are always discountenanced, and therefore, from the beginning of this jurisdiction, there was always a limitation to suits in this court.' "

The negligence, or laches, of the creditors objecting to the entering of a decree of final discharge of the debtor can not be excused because of any purported negligence of the clerk of this court in connection with the claims of said creditors, "The clerk of a court is essentially a ministerial officer. 7 Cycl. Law & Pro. 196. And he has nothing to do with the character or purpose of papers which are tendered to him to be filed." *United States v. Bell*, 127 F. 1002, 1003. The duties of the clerk of any court, and particularly those of the clerk of this court, are many and exacting, among such duties, however, is none which imposes upon him the task of examining the papers of each proceeding on file in his office to see whether, in the filing of papers, interested persons, be they litigants, claimants or counsel, have complied with a specific law, or a definite instruction. The fact that counsel for these objecting creditors said in his letter dated June 3,

1936, "Will you please file the same\* and see that they are referred to the proper referee," does not make any showing of negligence on the part of the clerk of this court *for the reason that no referee, as such, ever has been named in this proceeding and there is no duty resting upon the clerk to refer any papers to a special master, other than those which he is directed so to do by a specific order of the court under which he acts as clerk.*

It is worthy of note that nowhere in the record does it appear that counsel now representing the objecting creditors ever made any request [106] that he, as such counsel, be given special notice of any of the proceedings had, or taken herein. *His name does not appear as being the attorney in fact, or in law, on any of the claims filed with the court.* (See originals thereof in the folder containing the papers hereinbefore filed in the office of the clerk of this court.) In the claims of *J. J. Heidotting*, (designated in the petition of objection and in the affidavit supporting said petition as *J. J. Heidotting*) and *R. J. Sutton, Chas. A. Wetmore, Jr.* (no address given) is named attorney in fact; in the claims of *John Saunders, W. M. Addy, and J. B. Bowen*, no one is named in the letters of attorney.

Under all the facts and circumstances herein present, particularly in the light of the laches of said objecting creditors, it would appear, *and I so find and conclude*, that the prayer of said creditors'

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\*the claims in question.

petition should be denied, and that the report of the debtor of complete execution and accomplishment of confirmed plan of reorganization and petition for discharge should be passed upon by the court as if said petition of said objecting creditors never had been filed herein.

#### RECOMMENDATION OF SPECIAL MASTER

I therefore respectfully recommend that the court make its order in conformity with the foregoing finding and conclusion.

#### SPECIAL MASTER'S FEES AND EXPENSES

I am of the opinion that the sum of \$50.00 is a reasonable sum to be allowed me as my compensation for conducting the aforesaid hearing and the preparation of the within certificate and report, and the further sum of \$15.00 to cover my office and clerical expenses in connection therewith.

I also am of the opinion that the sum of \$29.65, made up of the items, \$6.25 per diem and \$20.70 for transcribing stenographic notes, is a reasonable sum to be allowed Mrs. Carolyn R. Blair for her [107] services as stenographic reporter herein.

I respectfully suggest that in any order which is made in connection with this certificate and report provision be made for incorporating in said order the allowances of the requested amounts, or such other amounts as to the court shall seem proper under the circumstances prevailing.

## PAPERS HANDED UP HEREWITH

I hand up herewith the following papers:

1. Envelope containing evidence; and
2. Transcript of Testimony.

Dated: June 12th, 1939.

Respectfully submitted,

BURTON J. WYMAN,

Special Master

[Endorsed]: Filed Jun. 12, 1939. [108]

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EXHIBIT "R"

[Title of District Court and Cause.]

SUPPLEMENTARY CERTIFICATE AND REPORT OF SPECIAL MASTER ON OBJECTION TO REPORT AND FINAL DISCHARGE OF DEBTOR

To Honorable Harold Louderback, United States District Judge for the Northern District of California:

I, Burton J. Wyman, one of the referees in bankruptcy of this court, acting as special master herein, hereby certify and report:

That through inadvertence the Brief of Claimants Supporting the Contention that their Claims were Properly Filed, Debtor's Points and Authorities in Reply to Opposition to Discharge, and Reply Brief of Claimants' to Debtors Points and Authori-

ties, were omitted from the papers handed up with my Certificate and Report of Special Master on Objection to Report and Final Discharge of Debtor. I therefore hand them up herewith as a part of the said last mentioned certificate and report.

Dated: June 13th, 1939.

Respectfully submitted,

BURTON J. WYMAN,

Special Master.

[Endorsed]: Filed Jun. 13, 1939. [109]

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EXHIBIT "S"

Re: Garden City Canning Company

OPINION

St. Sure, District Judge:

The question is whether in a reorganization proceeding under 77B of the Bankruptcy Act of 1934, creditors named in debtor's schedules and in the proposed plan of reorganization, who thereafter file claims with the Clerk instead of with the Special Master, as ordered by him, and whose claims are not paid, may be heard to object to the report of debtor of complete execution of confirmed plan and petition for final discharge.

The facts are undisputed. Debtor filed its petition for reorganization on February 6, 1936, which

was approved by the court. Debtor filed its verified schedule of stockholders and creditors, among the latter being W. M. Addy, J. B. Bowen, J. J. Heidotting, R. J. Sutton, and John Saunders, petitioners herein. On March 14, 1936, an order was made permitting debtor to remain in permanent possession and referring the entire matter to Burton J. Wyman, Referee in Bankruptcy, as special master for hearing and report. On April 10, 1936, debtor filed its verified schedule of assets and liabilities, and among the unsecured claims appear the following:

W. M. Addy .....	\$934.58
J. B. Bowen .....	633.29
J. J. Heidotting .....	308.91
R. J. Sutton .....	435.77
John Saunders .....	364.40

On May 1, 1936, the plan of reorganization was filed, containing, inter alia, a list of general unsecured claims, among which again appear the names and amounts above stated. In the plan debtor proposed to pay to all of its general unsecured creditors 50 percent. of the amount of their [110] claims in installments. On June 4, 1936, petitioners filed with the Clerk their claims as follows:

W. M. Addy .....	\$ 934.57
J. B. Bowen .....	625.00
J. J. Heidotting .....	308.91
R. J. Sutton .....	435.77
John Saunders .....	1,577.70



On November 4, 1936, debtor filed its petition for confirmation of plan, attached to which is a copy of the proposed plan, again listing the names of petitioners as creditors. Also attached to the petition is a "List of Unsecured Claims on File" in which petitioners' names do not appear. On December 2, 1936, the special master filed his report, recommending confirmation of the plan, which report did not, however, provide for the payment of petitioners' claims. The plan was approved by the court on December 15, 1936. On January 12, 1938, debtor filed its report of complete execution of the confirmed plan and petition for final discharge. On January 22, 1938, petitioners filed objections to the report and petition for final discharge, which were referred to the special master for hearing and report. The matter is now before the court on objections to the special master's report overruling petitioners' objections and recommending that the discharge be granted.

The special master adopted the view that petitioners were guilty of laches in that "they disregarded the express wording of the (his) notice which told them when and where their claims should be filed", which was on or before June 15, 1936, at the office of the special master, 1095 Market Street, San Francisco. As we have seen, petitioners, through their attorney, filed their claims on June 4, 1936, with the Clerk of the United States District Court. The Clerk acknowledged receipt of these claims,

and the docket shows they were filed on June 4, 1936. [111]

When amendments to the National Bankruptcy Act providing for corporate reorganization were passed by the Congress in 1934, much confusion resulted in the minds of the bench and bar as to the application of the new procedure of the provisions of the National Bankruptcy Act and the General Orders in Bankruptcy promulgated by the United States Supreme Court. It is now settled that a reorganization is not in bankruptcy until liquidation is ordered. In 1934 General Order XX read: "Proofs of claims and other papers filed subsequently to the reference, except such as call for action by the judge, may be filed either with the referee or with the clerk." In 1935 General Order LXII was added, which states: "The following additional rules shall apply to proceedings under section 77B of the Bankruptcy Act," specifying a series of additional rules. In June, 1936, the United States Supreme Court amended the General Orders (298 U. S. 695) to state that certain of the General Orders should not apply to 77B proceedings, namely, XVII, XVIII, XXI, XXVIII and XXIX. No exclusion is made of Order XX. Under the circumstances it was quite natural for petitioners to assume that the proper place to file their claims was with the Clerk of this court.

There is a feature of the case which strongly appeals to me, and that is that the entire pro-

cedure leading up to the confirmation of the plan of reorganization shows actual knowledge on the part of the debtor of the claims of petitioners. Their names are given not only in the schedules, but also in the proposed plan itself. The claims are listed by the debtor, and undisputed save as to one of them. The plan of reorganization makes no provision for payment upon presentation [112] and acceptance of claims, but contains an unqualified offer to pay 50 percent. of the amount of the claims listed. Under the law as amended in 1938 there is no question that petitioners would share in the distribution. Sec. 224(4) of the Bankruptcy Act as amended in 1938. For debtor to seek to gain an advantage through petitioners' filing their claims with the Clerk instead of the special master, there being some justification for such action because of the uncertainty of the law at the time, is, under the admitted facts here, repugnant to equity.

The report and finding of the special master will be disapproved and rejected.

Dated: September 13, 1939.

[Endorsed]: Filed Sep. 13, 1939. [113]

## EXHIBIT "T"

## ORDER

Ordered:

1. That the "Certificate and Report of Special Master on Objection to Report and Final Discharge of Debtor" is disapproved and rejected.

2. That as there appears to be some question as to the accuracy of the claim of John Saunders, the debtor may have ten days from date hereof in which to file written objections to the allowance of said claim, which shall be heard upon notice.

3. That Burton J. Wyman as special master be and he is hereby allowed the sum of \$50 for his services as special master; the sum of \$15 to cover his office and clerical expenses; and \$29.65 for the services of his stenographic reporter; all to be taxed as costs herein.

4. That debtor's petition for a final decree and discharge now before the court be, and it is hereby denied, without prejudice, however, to the filing of another petition by said debtor for final decree and discharge if and when said debtor shall have satisfied the claims of the objecting creditors, and each of them.

Opinion filed.

Dated: September 13, 1939.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Filed Sep. 13, 1939. [114]

EXHIBIT "U"

[Title of District Court and Cause.]

NOTICE OF APPEAL FROM ORDER OF  
SEPTEMBER THIRTEENTH DENYING  
DEBTOR'S PETITION FOR A DIS-  
CHARGE.

To the Above Entitled Court and to the Clerk there-  
of and to William Addy, J. B. Bowen, J. T.  
Heidotting, R. J. Sutton and John Saunders  
and to whom it may concern:

Notice is hereby given that Garden City Canning  
Company, a corporation, the debtor above named,  
hereby appeals to the United States Circuit Court  
of Appeals for the Ninth Circuit from the order en-  
tered in this proceeding by the above entitled court  
on or about and not before September 13th, 1939  
disapproving and rejecting the report of Burton J.  
Wyman, as Special Master, and denying the appli-  
cation of Garden City Canning Company, said  
[115] debtor to a discharge, which order provided  
that said petition for a discharge could be renewed  
only after payment of the claims of William Addy,  
J. B. Bowen, J. T. Heidotting, R. J. Sutton and  
John Saunders and which order fixed the Special  
Master's compensation and directed that the same  
be taxed as costs.

The amount involved in this appeal and the value  
of the property affected by said order of the Dis-

trict Court involves more than Five Hundred Dollars (\$500.00).

Dated: October 11th, 1939.

LOUIS ONEAL and  
TORREGANO & STARK

By ERNEST J. TORREGANO

Attorneys for Garden City  
Canning Company, Debtor.

Address of Attorneys for William Addy, J. B.  
Bowen, J. T. Heidotting, R. J. Sutton and John  
Saunders:

Messrs. Brobeck, Phleger & Harrison  
and Moses Lasky, Esq.

Crocker Building  
San Francisco, Calif.

Loyd E. Hewit, Esq.  
Yuba City, California.

(Admission of service)

[Endorsed]: Filed Oct. 11, 1939. [116]

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EXHIBIT "V"

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know all men by these presents: That we, Garden City Canning Company, a corporation, as principal, and the American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, and authorized to transact business in the State of California, as

Surety, are held and firmly bound unto William Addy, J. B. Bowen, J. T. Heidotting, R. J. Sutton and John Saunders, in the full and just sum of Two Hundred Fifty & 00/100 Dollars (\$250.00), to be paid to the said William Addy, J. B. Bowen, J. T. Heidotting, R. J. Sutton and John Saunders, their heirs, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 11th day of October, 1939.

Whereas, the Garden City Canning Company, a corporation, Debtor in the above-entitled action is about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from an order entered in this proceeding by the above-entitled Court on or about and not before September 13th, 1939, disapproving and rejecting the report of Burton J. Wyman, as Special Master, and denying the application of Garden City Canning Company, a corporation, said debtor, to a discharge.

Now, the Condition of the above obligation is such, that if the said Garden City Canning Company, a corporation, shall prosecute the said appeal to effect, and answer all charges and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

This recognizance shall be deemed and construed to contain the "Express Agreement" for summary

judgment and execution thereon, mentioned in Rule 34 of the said United States District Court.

GARDEN CITY CANNING  
COMPANY

By G. J. HTRVO

AMERICAN SURETY COMPANY  
OF NEW YORK

By: W. J. CONKLIN

Res. Vice-President.

Attest:

[Seal] B. DUCRAY

Res. Asst. Secretary.

Bond #445603-K.

Premium \$10.00 per annum. [118]

State of California,  
City and County of San Francisco

On this 11th day of October in the year one thousand nine hundred and thirty-nine before me, Thomas A. Dougherty, a Notary Public in and for said City and County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared W. J. Conklin and B. Ducray known to me to be the Resident Vice-President and Resident Assistant Secretary respectively of the American Surety Company of New York the corporation described in and that executed the within and foregoing instrument, and known to me to be the persons who executed the said instrument on behalf of the said corporation, and they both duly acknowl-



edged to me that such corporation executed the same. In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office, in the said City and County of San Francisco, the day and year in this certificate first above written.

[Seal]                    THOMAS A. DOUGHERTY

Notary Public in and for the City and County of  
San Francisco, State of California.

My commission expires August 10, 1943.

[Endorsed]: Filed Oct. 11, 1939. [117]

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EXHIBIT "W"

[Title of District Court and Cause.]

STIPULATION EXTENDING TIME FOR  
DOCKETING RECORD IN APPELLATE  
COURT

It Is Hereby Stipulated by and between the appellant, Garden City Canning Company, and the appellees, William Addy, J. B. Bowen, J. T. Heidotting, B. J. Sutton and John Saunders, that the appellant may have to and including the 5th day of December, 1939, within which to docket the record on appeal herein with the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: November 17th, 1939.

LOUIS ONEAL  
 TORREGANO & STARK  
 By ERNEST J. TORREGANO  
 Attorneys for Appellant.

LOYD HEWITT  
 A. M. DREYER  
 BROBECK, PHLEGER &  
 HARRISON  
 By A. M. DREYER  
 Attorneys for Appellees.

It Is So Ordered.

Dated: November 18, 1939.

A. F. ST. SURE  
 United States District Judge.

[Endorsed]: Filed Nov. 18, 1939. [119]

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EXHIBIT "X"

[Title of District Court and Cause.]

STIPULATION EXTENDING TIME FOR  
 DOCKETING RECORD IN APPELLATE  
 COURT

It Is Hereby Stipulated by and between the appellant, Garden City Canning Company, and the appellees, William Addy, J. B. Bowen, J. T. Heidotting, B. J. Sutton and John Saunders, that the appellant may have to and including the 20th day of

December, 1939, within which to docket the record on appeal herein with the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: December 1st, 1939.

LOUIS ONEAL

TORREGANO & STARK

By ERNEST J. TORREGANO

Attorneys for Appellant

LOYD HEWITT

A. M. DREYER

BROBECK, PHLEGER &

HARRISON

By A. M. DREYER

Attorneys for Appellees.

It Is So Ordered.

Dated: December 5, 1939.

A. F. ST. SURE,

United States District Judge.

[Endorsed]: Filed Dec. 5, 1939. [120]

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EXHIBIT "Y"

[Title of District Court and Cause.]

DESIGNATION OF POINTS TO BE RELIED  
UPON ON APPEAL

1. There is no evidence to support the order of the District Court denying appellant's petition for discharge.

2. The order confirming the plan of reorganization being a final order of the District Court and having been made on notice to appellees they are bound by the terms thereof.

3. Appellees are estopped from objecting to the appellant's application for a discharge because although they received notice requiring them to file their claims with the [121] Special Master in the above entitled proceedings they disregarded said notice and unknown to appellant and its attorneys they filed their said claims in the office of the Clerk of the District Court.

4. Appellees did not follow the law and the general orders of the Supreme Court in filing their said claims in the reorganization proceedings and appellant, believing that said claims had not been filed, borrowed sufficient money to pay the claims of creditors that had been filed as reported in the petition to confirm the plan of reorganization, which plan was confirmed after notice to the appellees; that appellant at the present time has no assets.

5. Appellees are estopped from objecting to the final discharge of appellant as their failure to properly file their claims was due to their own negligence and by reason of said negligence appellant has in good faith paid the remaining creditors, who filed their claims in accordance with the notice approved by the court, the sum due them, and appellant, in order to obtain the money required to be paid under said plan of reorganization as confirmed, divested itself of all of its assets.

6. Appellees are estopped from objecting to the discharge of appellant in that appellees had notice of the hearing of the petition for confirmation of the plan of reorganization and had they appeared at that time the District Court would have had the power to make provision for the payment to said appellees or required the appellant to file an amended plan of reorganization, but, on the contrary, appellees, by their failure to appear, permitted the District Court to grant appellant's petition for confirmation of the plan of reorganization, which petition made no provision for payment to appellees.

7. The issues raised by appellees before the District Court are res adjudicata by reason of the final order [122] of the District Court approving the plan of reorganization.

8. The District Judge abused his power in denying appellant a discharge for the reason that the report of the Special Master, after due hearing, recommending appellant's petition for discharge, was supported by uncontroverted evidence and was not erroneous.

LOUIS ONEAL,  
TORREGANO & STARK,  
By ERNEST J. TORREGANO  
Attorneys for Appellant. [123]

[Endorsed]: No. 9400. United States Circuit Court of Appeals for the Ninth Circuit. Garden City Canning Company, Appellant, vs. William Addy, J. B. Bowen, J. T. Heidotting, R. J. Sutton and John Saunders, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed, December 20, 1939.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

No. 9400.

GARDEN CITY CANNING COMPANY,  
Appellant,

vs.

WILLIAM ADDY, J. B. BOWEN, J. T. HEI-  
DOTTING, R. J. SUTTON and JOHN  
SAUNDERS,

Appellees.

DESIGNATION OF RECORD AND STATE-  
MENT OF POINTS UNDER RULE 19

The appellant hereby requests that the entire  
"Agreed Statement of a Case for use on Appeal",

as approved by the Judge of the District Court, be printed.

The appellant hereby designates as the points on which it intends to rely on appeal all of the points designated in the designation of points attached to the said agreed statement as Exhibit "Y", and made a part of said agreed statement.

Dated: December 29, 1939.

LOUIS ONEAL,  
TORREGANO & STARK,  
By ERNEST J. TORREGANO,  
Attorneys for Appellant. [125]

Receipt of a copy of the within Designation of Record and Statement of Points Under Rule 19 is hereby admitted this 29 day of December, 1939.

LOYD HEWITT  
A. M. DREYER  
MOSES LASKY  
BROBECK, PHLEGER &  
HARRISON  
By M. LASKY  
Attorneys for Appellees.

[Endorsed]: Filed Dec. 29, 1939. Paul P. O'Brien, Clerk. [126]

